

**D.T.E. 99-60 - Fitchburg Gas and Electric Light Company d/b/a Until (“Unitil”)**

**Default Service Bid Evaluation Report**

Large Customer Group

**REDACTED VERSION**

File Date: July 22, 2005

Fitchburg Gas and Electric Light Company d/b/a Unitil (“Unitil”)  
Electric Default Service Bid Evaluation Report

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## Fitchburg Gas and Electric Light Company d/b/a Unitil (“Unitil”) Electric Default Service Bid Evaluation Report (“Report”)

### ***Introduction***

On Monday, June 27, 2005, Unitil announced that its Request for Proposals (“RFP”) for default service for the period beginning September 1, 2005 was available. While the supply service sought will be delivered to retail customers as “basic service” in accordance with D.T.E. 04-115-A, during the wholesale procurement process the term “default service” was used. This naming convention was described in the RFP.

The RFP implemented a competitive bid process that resulted in fixed monthly pricing for Unitil’s large customer group, in accordance with D.T.E. 99-60. Unitil sought and purchased one hundred percent (100%) of default service requirements for its Large Customer Group for the three-month period of September 1, 2005 through November 30, 2005 in accordance with D.T.E 02-40-C. Unitil’s Large Customer Group consists of rate class GD-3.

The RFP sought bids that did not include Renewable Energy Certificates (“RECs”) for compliance with Renewable Portfolio Standards (“RPS”); rather Unitil will procure the RECs required for RPS compliance independent of its default service procurements. Unitil’s approach to compliance with the RPS obligations associated with its default service loads is described in the section labeled “Compliance with Renewable Portfolio Standards,” as required by D.T.E. 02-40-B.

This Report describes Unitil’s solicitation process and its selection of the winning bidder. A copy of the RFP is attached as Tab A. Unitil’s comparison of bids, which is confidential and for which Unitil seeks protective treatment as described in the cover

letter and motion for protective treatment accompanying this filing, is attached as Tab B. Broker sheets which report on the current market for Massachusetts Renewable Energy Certificates (“Mass RECs”) are attached as Tab C.

### ***Solicitation Process***

Unitil accomplished market notification of the RFP by announcing the availability of the RFP electronically to all participants in NEPOOL, in particular, to the members of the NEPOOL Markets Committee on Monday, June 27, 2005. In addition, Unitil announced the issuance of the RFP to a list of contacts from energy companies and interested parties who have previously expressed interest in receiving copies of Unitil’s solicitations, including 55 individuals representing 26 separate energy companies, which count does not include other distribution companies, consultants (unless working on behalf of a named client who might participate), brokers or members of public agencies. The RFP documents were provided to interested parties using Unitil’s corporate website ([www.unitil.com/rfp](http://www.unitil.com/rfp)). A copy of the RFP and its attachments is attached as Tab A.

The RFP described the particulars of Unitil’s default service, the related customer-switching rules, and the form of power service sought. In order to gain the greatest level of market interest in supplying the load, Unitil endeavored to provide potential bidders with appropriate and accessible information as well as flexibility with regard to contracting options.

Along with the RFP, Unitil provided potential bidders with historic hourly loads served by Unitil as default service (either as standard offer service or default service) for the period January 1, 2003 through June 23, 2005, for the large customer group. Unitil also compiled into an Excel spreadsheet its historic DOER 110 reports from January 2000 through May 2005. The DOER 110 report details by customer rate class the number of

customers and monthly retail billed kWh sales by rate class and supply type. This data was updated on July 12, 2005 to include data for the month of June 2005.

In order to communicate to bidders the relative concentration of the Large Customer Group, Unitil provided a listing of its 34 large (GD-3) customers, labeled generically, showing each customer's annual peak and energy requirements, their meter read cycle and a calendar of meter read dates for each cycle and their current source of power supply (default service or competitive generation). Unitil also provided information instructing potential bidders in accessing class average load shape (8760 hours) data on Unitil's website. Lastly, Unitil provided estimated monthly loads for the large customer group over the term of the period for which service was sought.

Unitil introduced a new form of contract which is very similar to a contract previously issued by its New Hampshire affiliate Unitil Energy Systems, Inc. In order to provide potential bidders with contracting flexibility, Unitil also indicated a willingness to tailor any existing contract that had previously been negotiated between Unitil and a bidder to fit the current transaction. Finally, Unitil included a copy of its Default Service tariff, effective as of the date of the solicitation. Throughout the solicitation, Unitil responded to bidder questions and actively participated in maintaining bidder interest in the solicitation through regular telephonic and electronic communications.

On Wednesday, July 13, 2005, Unitil received initial proposals from interested bidders that included detailed background information, proposed contractual terms and indicative pricing. Unitil reviewed the proposals and worked with bidders to establish and evaluate their creditworthiness, their extension of adequate credit to Unitil to facilitate the transaction, their capability of performing the terms of the RFP in a reliable manner, and their willingness to enter into contract terms acceptable to Unitil. All bidders were invited to submit final bids.

On Tuesday, July 19, 2005, Unitil received final pricing from bidders who participated in the indicative round and conducted its evaluation. Unitil selected its winning bidder and all other bidders were notified that they were not selected.

### ***Selection of Winning Bidders***

Unitil based its selection of winning bidders on both quantitative and qualitative criteria. When the indicative bids were received, Unitil compared the proposed pricing strips by calculating weighted average prices for the periods during which service was sought, using the evaluation loads that were issued to bidders along with the RFP. Unitil then coordinated with bidders to obtain the best contractual and credit terms each bidder was willing to offer to Unitil and to establish confidence in each bidder's ability to perform. When final bids were received, Unitil compiled the weighted average pricing strips, again using the evaluation loads that were issued to bidders along with the RFP. Unitil then evaluated the price and non-price aspects of the final bids received and awarded its default service load to the supplier who provided the most overall value, in Unitil's estimation. The bid comparison, which is confidential, is attached as Tab B.

### ***Compliance with Renewable Portfolio Standards ("RPS")***

Consistent with its recent practices, Unitil did not request that interested suppliers include along with their bids the provision of Renewable Energy Certificates ("RECs") that would comply with the Massachusetts Renewable Energy Portfolio Standards ("RPS") that became effective on January 1, 2003. Unitil recognizes its obligation as the retail supplier of default service to its customers to provide RECs in compliance with 225 CMR 14.00. Unitil intends to purchase qualifying RECs directly from the market separately from its default service solicitations. In compliance with DTE 02-40-B, a discussion of Unitil's approach to meeting its RPS obligations follows.

A number of factors come into play with regard to Unitil's approach to RECs compliance for its default service loads. Unitil believes that the market for Massachusetts qualifying RECs is currently illiquid, and that by the time Unitil is required to demonstrate compliance opportunities may arise to purchase RECs either from facilities that are not currently registered as qualifying Massachusetts new renewable facilities or from entities who come to have excess RECs after meeting their obligations. Unitil also expects that it may be able to receive more favorable RECs pricing if the periods for which RECs are sought are flexible. Unitil's ability as a load serving entity to bank RECs in its New England Generation Information System ("NE-GIS") account is expected to allow Unitil to utilize the RECs it acquires efficiently, rather than requiring pricing based on a specific delivery period.

Unitil considers that interested bidders in its default service solicitations are not necessarily the parties that hold title to RECs. Similarly, it is likely that some holders of RECs do not have the bulk power supply presence to compete for and win a default service solicitation. Meanwhile, nothing would prohibit a bulk power supplier from participating in a RECs only solicitation or brokered transaction. While there are secondary markets for RECs, they are not very liquid. Unitil prefers to go to these markets directly or to participate in periodic auctions directly rather than risk incurring mark ups which might accompany bids from default service suppliers who are simply remarketing the RECs.

Unitil believes it will be administratively more efficient to purchase and deliver RECs to its NE-GIS account independent of its default service procurement schedule since it expects to have thirteen different default service contracts each year<sup>1</sup>. Since Unitil's

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<sup>1</sup> The thirteen Default Service contracts would be as follows: (1) Large Customer Group from Jan-Feb, (2) Large Customer Group from Mar-May, (3) Large Customer Group from Jun-Aug, (4) Large Customer Group from Sep-Nov, (5) Large Customer Group for Dec, (6) 50% Medium Customer Group for Jan-May, (7) 50% Medium Customer Group for Jan-Nov, (8) 50% Medium Customer Group for Jun-Dec, (9) 50% Medium Customer Group for Dec, (10) 50% Small Customer Group for Jan-May, (11) 50% Small

default service schedule does not fall on a quarterly basis, as does the schedule for demonstrating RPS compliance, additional administrative requirements result.

Unitil's approach with regard to establishing the cost of RPS compliance in its current retail rates for default service, as described in a filing under separate cover today, is to assume an estimated cost of compliance. Unitil's expected cost of RPS compliance is \$51.50 per REC for 2005 requirements. This estimate reflects the most recent trades of RECs as reflected on broker sheets by two separate brokers of Massachusetts RECs, as well as quotes received from sellers of RECs. One broker sheet, dated July 18, 2005, indicates a 2005 bid price of \$48.00, and offer of \$53.00 and a last transaction price of \$51.50, dated June 22, 2005. The other broker sheet, dated June 17, 2005, indicates a 2005 bid price of \$47.00, an offer of \$53.19 and a last transaction price of \$46.00, which Unitil believes occurred on November 1, 2004. Since a recent transaction price is available, and since the bid price and ask price shown by each broker are similar, Unitil believes the recent transaction price of \$51.50 is representative of the current market for 2005 RECs. The broker sheets are attached as Tab C.

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Customer Group for Jan-Nov, (12) 50% Small Customer Group for Jun-Dec, (13) 50% Small Customer Group for Dec.



***Tab A. FG&E Default Service RFP***

# Fitchburg Gas and Electric Light Company (“FG&E”)

## Default Service Request for Proposals

### Service Periods:

Large Customer Group (100%):  
September 1, 2005 – November 30, 2005

Issued: June 27, 2005

# Fitchburg Gas and Electric Light Company (“FG&E”)

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**Request for Proposals  
To Provide  
Default Service  
To Customers of  
Fitchburg Gas and Electric Light Company**

**I. Introduction**

The Massachusetts Electric Industry Restructuring Act of 1997 (“Massachusetts Act”) provided for competition in the electric utility industry by extending competition in the wholesale power supply markets to retail customers through the provision of retail access to all customers. The Massachusetts Act provided access for all retail customers of Fitchburg Gas and Electric Light Company (“FG&E”) as of March 1, 1998. The Massachusetts Act requires each distribution company to provide default service to those customers who are not receiving generation service from a competitive supplier (“Default Service”). Although this RFP uses the term Default Service, the supply service sought herein is now referred to as Basic Service in all customer communications<sup>1</sup>.

The Massachusetts Act requires Default Service to be competitively procured. In addition, the Massachusetts Department of Telecommunications and Energy (“MDTE”) has conducted a number of proceedings on rules and procedures for the provision and pricing of Default Service. MDTE has ordered all electric companies in Massachusetts to procure Default Service through competitive solicitations by customer group and to procure such power at fixed monthly prices<sup>2</sup>. MDTE has also required electric companies to procure separately for three customer groups. For purposes of Default Service procurement, FG&E has defined a “Small Customer Group”, a “Medium Customer Group” and a “Large Customer Group”, each comprised of various rate classes of customers as defined below. For this RFP we will be procuring for the large customer group.

MDTE also implemented rules and procedures for the provision and pricing of Default Service in which it clarified procurement rules with regard to Standard Market Design (“SMD”) and established procurement schedules<sup>3</sup>. Since FG&E’s customers are located in a single SMD load zone, the SMD clarification does not impact this RFP. With regard to procurement schedules, MDTE ordered electric companies to procure power for their residential and small C&I customers on a staggered basis whereby fifty percent of Default Service supply is procured every six months for a twelve-month period. The MDTE also ordered electric companies to procure power for their medium and large C&I Default Service customers on a quarterly basis. FG&E purchases for its Small Customer Group and Medium Customer Group under the residential and small C&I customer schedule

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<sup>1</sup> See Docket D.T.E. 04-115-A.

<sup>2</sup> See Dockets D.T.E. 99-60-A and D.T.E. 99-60-B.

<sup>3</sup> See Dockets D.T.E. 02-40-A, D.T.E. 02-40-B and D.T.E. 02-40-C.

(50% for twelve months) and purchases for its Large Customer Group under the medium and large C&I schedule (100% quarterly).

FG&E has issued this RFP to solicit competing power supply offers to supply firm, load-following power to meet the requirements of its Default Service customer group as follows. The winning supplier chosen to serve FG&E's Large Customer Group will provide 100% of the Large Customer Group Default Service load for the 3-month period of September 1, 2005 through November 30, 2005.

FG&E will obtain Renewable Energy Certificates ("RECs") required for compliance with Renewable Portfolio Standard ("RPS") regulations under a separate process. As such, there are no requirements to provide RECs associated with the service sought herein.

This RFP provides background information and historical data, details the service requirements and commercial terms, and elaborates on the procedures to be employed by FG&E to select the winning suppliers. All materials for this RFP are available at the following website address: [www.unitil.com/rfp](http://www.unitil.com/rfp) under "Current Procurement" for FG&E. The RFP and its appendices, including the submission form and contract materials, are included as separate editable electronic files along with a number of data and Acrobat files. The contents of each file are described in this document. Please contact Richard MacInnis at (603) 773-6444 with any questions regarding these materials.

## **II. Description of Default Service**

FG&E is soliciting load-following power supply offers to meet the needs of its ultimate customers who are taking service under its Default Service tariff<sup>4</sup>. As described in the tariff, Default Service is provided to retail customers who are not taking service from a competitive supplier. Default Service can be initiated by: (a) a customer notifying FG&E that they wish to terminate service from their competitive supplier and commence Default Service; (b) a competitive supplier notifying FG&E that it is terminating service to a customer; (c) a competitive supplier ceasing to provide service to a customer without notifying FG&E; or (d) a customer moving into FG&E's service territory.

For the purpose of this solicitation, FG&E seeks bids from power suppliers ("Respondents") to serve the Default Service requirements of its Large Customer Group, which is comprised of the customer rate classes shown in the following table. The load associated with the large customer group is modeled in the NEPOOL market system as load asset 1095.

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<sup>4</sup> A copy of FG&E's current Default Service tariff, effective June 1, 2005, is attached as Appendix C, see file "App\_C\_DS\_Tariff\_2005-06.pdf".

<b>Customer Group</b>	<b>Load Asset #</b>	<b>Customer Rate Class</b>
<i>Small Customer Group</i>	<i>1737</i>	<i>RD-1, RD-2, GD-1</i>
<i>Medium Customer Group</i>	<i>10693</i>	<i>GD-2, GD-4, GD-5 and SD</i>
<i>Large Customer Group</i>	<i>1095</i>	<i>GD-3</i>

The amount of Default Service to be supplied by the winning bidder will be determined in accordance with the retail load associated with those customers who from time to time rely on Default Service. FG&E cannot predict the number of customers that will rely on Default Service, how much load will be represented by these customers, or how long they will continue to take Default Service. FG&E expressly reserves the right to encourage customers to choose their own supplier from the competitive marketplace instead of taking Default Service.

#### Data Provided

To assist Respondents in determining the potential load requirements, a variety of data has been provided with this RFP. The provided data include the following.

Historic Hourly Loads are provided for FG&E's Large Customer Group for the period January 1, 2003 through June 23, 2005 (please see file "Hourly\_Loads\_2005-06.xls").

Historic Retail Monthly Sales data from DOER 110 reports filed by FG&E from April 1999 through May 2005 have been compiled and provided in Excel format. The DOER 110 report details by customer rate class the number of customers and monthly retail billed kWh sales delivered to customers receiving Standard Offer Service, Default Service and generation service from competitive retail suppliers. The data have been summarized by the current customer group definitions and charts have been added to show monthly sales by supply type for each customer group (please see file "DOER\_110\_Report\_2005-06.xls").

Class Average Load Shapes (8760 hours) are available on FG&E's website at <http://services.FG&E.com/fge/loadshapes.asp>.

Distribution System Loss Factors are as shown in the following table. Please note that the quantity of supply sought via this RFP includes distribution losses internal to FG&E's system and will be purchased by FG&E from the winning bidder. Distribution losses are embedded in the historical data provided and should not be netted to determine supply requirements and billing determinants separately.

<b>Rate Class</b>	<b>Distribution Loss Factor</b>
<i>RD-1, RD-2</i>	7.52%
<i>GD-1, GD-2, GD-4, GD-5</i>	7.72%
<i>GD-3</i>	4.48%
<i>SD</i>	6.71%

Large Customer Concentration is demonstrated by a listing of the annual energy and demand requirements of FG&E's GD-3 customers for the 12 months ending May 2005. This listing indicates the current supply type (Default Service or competitive generation) and next meter read date for each customer (please see file "Large\_Customer\_Summary\_2005-06.xls").

Evaluation Loads that FG&E will use to calculate weighted average prices of bids received from Respondents for the purpose of comparing competing bids on the basis of price are provided. These estimated loads may be instructive to Respondents, but should in no way be construed to represent any contract quantity or billing determinant or to create any obligation to any party (please see file "Evaluation\_Loads\_2005-06.xls").

### **III. General Provisions**

#### Terms and Conditions

FG&E will award the following Default Service load to one winning bidder:

- (1) Large Customer Group – 100% of service requirements from September 1, 2005 through November 30, 2005.

#### Power Supply Contract

Respondents who have previously finalized contract language (including EEI Master Agreements and stand alone contracts) with FG&E for the provision of Default Service supply may use a prior contract as a basis for establishing contractual terms and conditions for the service sought via this RFP. Respondents who either do not have a prior contract or do not wish to use a prior contract, must execute the Power Supply Agreement in Appendix B (please see file named "App\_B\_Power\_Agreement\_2005-06.doc". Respondents may submit contract comments along with their indicative bids. FG&E will

review and negotiate contract changes in good faith, but any contract changes must be mutually agreed prior to final bidding. Winning bidders will be required to execute a contract acceptable to FG&E within two (2) business days of being notified they were selected as the winner.

The obligations of FG&E and the winning bidders are subject to and conditioned upon MDTE approval of the retail rates derived from the transaction sought in this solicitation. FG&E will use its best efforts to obtain MDTE's approval.

#### Proposal Process and Submission Dates

The following table outlines key dates associated with this procurement process.

Item	Date
RFP Issued	Mon, 6/27/05
Proposal Submission Forms Due (including proposed contract changes and indicative pricing )	Wed, 7/13/05 – 3pm EPT
Final Pricing Due	Tue, 7/19/05 – 10am EPT
Winning Supplier Notified	Tue, 7/19/05 – 1pm EPT
Contracts Executed	Thu, 7/21/05
FG&E files for MDTE Approval of Rates	Fri, 7/22/05
Service Commences	Thu, 9/1/05

Respondents to this RFP for Default Service must submit a completed Proposal Submission Form, including any proposed contract modifications, along with indicative pricing and then final pricing according to the schedule shown above. All submissions should be marked "FG&E Default Service" and sent via e-mail to Rich MacInnis (macinnis@unitil.com ). Please direct any questions to Rich MacInnis at (603) 773-6444.

Proposal Submission Forms are attached as Appendix A (please see file named "App\_A\_Submission\_Form\_2005-06.doc"). Forms and proposed contract changes are due by **3:00 p.m. EPT on July 13, 2005.**

Indicative Pricing is due with the Proposal Submission Form and may be submitted on either the "Indicative Pricing" page provided with the Proposal Submission Form document or the "Evaluation Loads" spreadsheet. In either case, Respondent's name and "Indicative Pricing" must be clearly stated and the notes on the "Indicative Pricing" sheet are assumed to be conveyed. Pricing must meet the requirements described in the Proposed Pricing portion of Section V. Indicative pricing is due **3:00 p.m. EPT on July 13, 2005.**



Final Pricing may be submitted on either the “Final Pricing” page provided with the Proposal Submission Form document or the “Evaluation Loads” spreadsheet. In either case, Respondent’s name and “Final Pricing” must be clearly marked and the notes on the “Final Pricing” sheet are assumed to be conveyed. Final pricing is due by **10:00 a.m. EPT on July 19, 2005.**

Winner Notified. FG&E intends to confirm final pricing, evaluate competing bids, and select and notify the winning bidder by **1:00 p.m. EPT on July 19, 2005.**

FG&E, at its sole discretion, reserves the right to issue additional instructions or requests for additional information, to extend the due date, to modify any provision in the RFP or any appendix hereto or to withdraw the RFP.

#### Contact Person and Questions

Questions regarding this RFP should be submitted to Rich MacInnis at (603) 773-6444 or at macinnis@unitil.com .

#### Right to Select Supplier

FG&E shall have the exclusive right to select or reject any and/or all of the proposals submitted at any time, for any reason and to disregard any submission not prepared according to the requirements contained in this RFP.

#### Customer Billing and Customer Service

The Default Service power supply procured under this RFP will be a wholesale supply. As such, the winning supplier will have no retail customer contact in any form. All customers taking Default Service will be retail customers of FG&E. As the retail provider of such service, FG&E will provide billing and customer service to customers receiving Default Service. In addition, FG&E will assume responsibility for the ultimate collection of moneys owed by customers in accordance with rules and regulations approved by the MDTE.

### **IV. Service Features**

#### Supply Obligation Period

For the Large Customer Group, 100% of the service requirements will be awarded for the period that begins 0001 hours on September 1, 2005 and ends at 2400 hours on November 30, 2005.

#### Delivery Point

Currently, the load obligation associated with the load assets is settled at the West Central Massachusetts Load Zone. In the event that NEPOOL implements nodal settlement of load obligations, supplier will be responsible for all relevant charges at the node where the

load assets are settled. The load physically exists and is metered at the Flag Pond substation.

### Form of Service

The winning supplier shall provide firm, load -following power for delivery to ultimate customers taking service under FG&E's Default Service tariff (see Appendix C). The obligations and responsibilities associated with providing Default Service shall be transferred to the winning supplier via an Ownership Share for Load Asset, utilizing the NEPOOL Asset Registration Process for the load assets associated with the customer groups. The quantity of service that suppliers will be responsible to deliver, and that FG&E will be responsible to purchase, includes the local distribution losses associated with delivery of electricity from the delivery point to the customers' meters, as described in the Data Provided portion of Section II.

Supplier shall be responsible for providing and paying for all energy and capacity services and for all ancillary services allocated to the Electrical Load (as defined in the RNA), associated with the load assets, as required by NEPOOL rules and/or the ISO New England, Inc. ("ISO") rules or their successors. FG&E shall be responsible for providing and paying for the transmission of the power across NEPOOL PTF and for all ancillary services allocated to the Network Load (as defined in the NEPOOL OATT), associated with the load assets. The specific requirements regarding the provision of energy, capacity and ancillary services by the supplier, and regarding the provision of transmission service by FG&E are detailed in the proposed Power Supply Agreement in Appendix B (under "Requirements" description).

FG&E will report Default Service loads associated with load asset 1095 (Large Customer Group) to ISO-NE on a daily basis in accordance with the reporting practices in New England. The load reported for Default Service customers will incorporate appropriate load allocation and estimation techniques and available meter readings for customers receiving Default Service from FG&E. Month end adjustments, based on customer meter readings, will be made to loads approximately 45 days after each month. Such adjustments will be priced at the contract price in effect for the month the load was served.

### Renewable Energy Portfolio Standards

The Massachusetts Act required the Division of Energy Resources ("DOER") to establish a Renewable Energy Portfolio Standard ("RPS") for all retail electricity suppliers selling electricity to end-use consumers in Massachusetts. Implementation of the RPS began on January 1, 2003 and requires FG&E to demonstrate compliance with RPS regulations. FG&E intends to acquire Renewable Energy Certificates ("RECs") under a separate process and therefore the service sought via this RFP does not include the provision of RECs for RPS compliance. However, the winning suppliers will be required to transfer the certificates obligation associated with the Default Service load it serves to FG&E's NEPOOL GIS account so that FG&E can demonstrate compliance with RPS regulations.

## **V. Proposal Requirements**

### **Requested Information**

Respondents to this RFP must provide the information identified in the Proposal Submission Form attached as Appendix A (please see “App\_A\_Submission\_Form \_2005-06.doc”). Respondents are asked to complete the submission form and return it to Rich MacInnis as indicated in Section III. Proposals should contain explanatory, descriptive and/or supporting materials as necessary.

Respondents will find that FG&E requests on its Proposal Submission Form that bidders indicate whether they will extend sufficient financial credit to FG&E to facilitate the transactions sought. FG&E has included with this RFP a copy of its most recent financials (see “FG&E Financials \_2005-06.zip”). Respondents are asked to indicate the financial security requirements they propose along with any proposed contract modifications they propose. Proposed contract language is requested in a reviewable and editable fashion, such as the revision marking features of Microsoft Word. Respondents are also asked to indicate whether they agree that the resulting contract is subject to MDTE approval of supporting retail rates as sought by FG&E.

FG&E will treat all information received from Respondents in a confidential manner and will not, except as required by law or regulatory authority, disclose such information to any third party or use such information for any purpose other than to evaluate the Respondent’s ability to provide the services sought in this RFP.

### **Proposed Pricing**

Respondents must specify the prices, in ¢/kWh, at which they will provide Default Service for each customer group they are bidding to serve. Proposed prices may vary by calendar month and by customer group, but must be uniform for the entire calendar month and must cover the entire supply obligation period sought for each customer group the Respondent is bidding to serve. Purchases will be made on an “as -delivered” energy basis with prices stated on a fixed ¢/kWh basis for all kWh reported to the ISO for Load Asset s 1095 (Large Customer Group). No maximum price is specified; however the resulting retail rates are subject to the review and acceptance of the MDTE.

Proposals that contain time of use pricing, other forms of variable pricing, quantity restrictions, demand charges, or other fixed charges will be rejected.

### **Bidder Requirements**

In order to secure reliable, low cost Default Service for its customers, FG&E wishes to include all qualified power suppliers interested in this solicitation.

Bidders must have access to the NEPOOL settlement process for the entire term of the sale, either as a Participant in NEPOOL or via arrangements with a Participant to utilize their settlement process.

Respondents must establish complete contract language, including financial security arrangements, with FG&E prior to submission of final pricing.

## **VI. Evaluation Criteria**

The principal criteria to be used in evaluating proposals will include, but may not be limited to:

- Lowest evaluated bid price over the supply obligation period;
- Financial and operational viability of the power supplier, including the establishment of mutually acceptable financial security arrangements; and
- Responsiveness to non-price requirements including the reasonable extension of financial credit to FG&E and agreement that the proposed transaction is subject to MDTE approval of retail rates as sought by FG&E to cover the cost of the transaction.

Respondent pricing will be evaluated by weighting the fixed monthly pricing according to the Evaluation Loads for each customer group provided in the file named "Evaluation\_Loads\_2005-06.xls" as described at the end of Section II.

## **Appendix A:        Proposal Submission Form**

See file named “App\_A\_Submission\_Form \_2005-06.doc”

RESPONDENT: \_\_\_\_\_

FG&E Default Service RFP  
Proposal Submission Form  
Due Wed, July 13, 2005

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**APPENDIX A: PROPOSAL SUBMISSION FORM**

RESPONDENT: \_\_\_\_\_

## 1. General Information

Name of Respondent	
Name of Parent or Guarantor (if any)	
Principal contact person - Name - Title - Company - Mailing address - Telephone number - Fax number - E-mail address	
Secondary contact person (if any) - Name - Title - Company - Mailing address - Telephone number - Fax number - E-mail address	
Legal status of Respondent (e.g., sole proprietorship, partnership, limited partnership, joint venture, or corporation)	
State of incorporation, residency or organization	
The names of all general and limited partners (if Respondent is a partnership)	

RESPONDENT: \_\_\_\_\_

FG&E Default Service RFP  
Proposal Submission Form  
Due Wed, July 13, 2005

Description of Respondent and all relevant affiliated entities and joint ventures	

## 2. Financial Information

Please provide the following for Respondent and for Parent or Guarantor (if any)	Respondent	Parent or Guarantor
Current debt ratings, including names of rating agencies and dates of ratings. If entity is not rated, please indicate.		
Date last fiscal year ended.		
Total revenue for the most recent fiscal year.		
Total net income for the most recent fiscal year.		
Total assets as of the close of the previous fiscal year.		
DUNS Number and Federal Tax ID.		
Please provide a copy of the most recent financials including balance sheet, income statement and cash flow statement.		



RESPONDENT: \_\_\_\_\_

### 3. Defaults and Adverse Situations

<p>Describe, in detail, any situation in which Respondent (either alone or as part of a joint venture), or an affiliate of Respondent, defaulted or was deemed to be in noncompliance of its contractual obligations to deliver energy and/or capacity at wholesale within the past five years.</p> <p>Explain the situation, its outcome and all other relevant facts associated with the event described.</p> <p>Please also identify the name, title and telephone number of the principal manager of the customer/client who asserted the event of default or noncompliance.</p>	
<p>Describe any facts presently known to Respondent that might adversely affect its ability to provide the service(s) bid herein as provided for in the Request for Proposals.</p>	

### 4. NEPOOL and Power Supply Experience

<p>Is Respondent a member of NEPOOL?</p>	
<p>Please list Respondent's NEPOOL Participant ID.</p>	
<p>If Respondent is NOT a NEPOOL member, list the name and Participant ID of the NEPOOL member who will carry Respondent's obligations in its settlement account. Please provide a supporting statement and contact information from such member.</p>	

RESPONDENT: \_\_\_\_\_

Describe Respondent's experience and record of performance in the areas of power marketing, brokering, sales, and/or contracting, for the last five years within NEPOOL and/or the New England region.	
Has Respondent previously provided Default Service to FG&E?  If "YES", no references are needed. If "NO", please provide references as requested below. ----- --  Provide three references (name, title and contact information) who have contracted with the Respondent for load-following services or who can attest to Respondent's ability in the areas of power supply portfolio management within the past 2 years.	YES or NO  ----- -  1.  2.  3.

## 5. Non Price Terms

Does Respondent extend sufficient financial credit to FG&E to facilitate the transaction sought via this RFP?	YES or NO
Please indicate what, if any, financial security requirements Respondent has of FG&E in order to secure the extension of credit. Please attach any proposed contractual language.	
Does Respondent agree that the obligations of both parties are subject to and conditioned	YES or NO

RESPONDENT: \_\_\_\_\_

upon the Massachusetts DTE's approval of the retail rates derived from the transaction sought in this solicitation?	
Please list all regulatory approvals required before service can commence.	
<p>Please indicate contractual preference:</p> <p>(A) Respondent has previously contracted with FG&amp;E to provide Default Service and prefers to <u>use a prior contract</u> or existing EEI Master Agreement and transaction confirmation as the basis for establishing contract terms for this transaction.</p> <p>(B) Respondent prefers to execute a power supply contract substantially similar to the <u>Power Supply Agreement</u> contained in Appendix B.</p>	<p>(A) PRIOR CONTRACT or EXISTING EEI</p> <p>or</p> <p>(B) POWER SUPPLY AGREEMENT, App B</p>
<p>If Respondent prefers to execute the Power Supply Agreement in Appendix B, please provide any proposed modifications.</p> <p>Please briefly list issues here and provide proposed changes to the language in the document in revision marking as appropriate.</p>	

RESPONDENT: \_\_\_\_\_

## 6. INDICATIVE PRICING

### Large Customer Group (Rates GD-3)

Month	Percent of Load Asset 1095	Bid Prices (¢/kWh)
Sept 05	100%	
Oct-05	100%	
Nov-05	100%	

#### Notes:

- The indicative pricing submitted here is subject to the terms of the Default Service Request for Proposals issued by FG&E on June 27, 2005.
- A single winning bidder will be chosen to serve the customer group for the period sought.
- The kWh price should be in format of: "3.90" cents, "4.50" cents, etc.
- FG&E will not accept bids that contain time of use pricing, other forms of variable pricing, quantity restrictions, demand charges, or other fixed charges.
- Local distribution losses from the delivery point to customers' meters are included in the quantity of service and should not be priced separately.
- The pricing should not reflect the provision of Renewable Energy Credits (RECs) needed to comply with the Renewable Portfolio Standards (RPS) established in Massachusetts.

RESPONDENT: \_\_\_\_\_

## 7. FINAL PRICING

### Large Customer Group (Rates GD-3)

Month	Percent of Load Asset 1095	Bid Prices (¢/kWh)
Sep-05	100%	
Oct-05	100%	
Nov-05	100%	

#### Notes:

- The indicative pricing submitted here is subject to the terms of the Default Service Request for Proposals issued by FG&E on June 27, 2005.
- A single winning bidder will be chosen to serve the customer group for the periods sought.
- The kWh price should be in format of: "3.90" cents, "4.50" cents, etc.
- FG&E will not accept bids that contain time of use pricing, other forms of variable pricing, quantity restrictions, demand charges, or other fixed charges.
- Local distribution losses from the delivery point to customers' meters are included in the quantity of service and should not be priced separately.
- The pricing should not reflect the provision of Renewable Energy Credits (RECs) needed to comply with the Renewable Portfolio Standards (RPS) established in Massachusetts.

**Appendix B:       Default Service Power Supply Agreement**

See file named “App\_B\_Power\_Agreement\_2005-06.doc”

## POWER SUPPLY AGREEMENT

This POWER SUPPLY AGREEMENT (“Agreement”) is dated as of [date] and is by and between FITCHBURG GAS AND ELECTRIC LIGHT COMPANY (“FG&E” or “Buyer”), a Massachusetts corporation, and [Company] (“Seller”), a [what]. This Agreement provides for the sale by Seller of Default Service, as defined herein, to the Buyer. The Buyer and Seller are referred to herein individually as a “Party” and collectively as the “Parties”.

### ARTICLE 1. BASIC UNDERSTANDINGS

Seller, in response to a Request for Proposals issued on June 27, 2005 by the Buyer, has been selected to be the supplier of firm, load-following power to meet the Buyer’s Service Requirements as defined in the Service Requirements Matrix found in Appendix A. This Agreement sets forth the terms under which Seller will supply Default Service to the Buyer during the Delivery Term.

### ARTICLE 2. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings specified in this Article. In addition, except as otherwise expressly provided, terms with initial capitalization used in this Agreement and not defined herein shall have the meaning as defined in the ISO Rules.

**Affiliate** means, with respect to any Party, any person (other than an individual) that, directly or indirectly, controls, or is controlled by such Party. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

**Business Day** means a 24-hour period ending at 5:00 p.m. EPT, other than Saturday, Sunday and any day which is a legal holiday or a day on which banking institutions in Boston, Massachusetts are authorized by law or other governmental action to close.

**Buyer** means Fitchburg Gas and Electric Light Company, its successors, assigns, employees, agents and authorized representatives.

**Buyer’s System** means the electrical transmission and distribution system of the Buyer.

**Buyer’s Service Territory** means the geographic area served by Fitchburg Gas and Electric Light Company.

**Commencement Date** means, with respect to a Service Requirement the period at HE 0100 EPT on the date set forth for the Service Requirement on Schedule 1 of Appendix A.

**Commission** means the Federal Energy Regulatory Commission.

**Competitive Supplier Terms** means the Terms and Conditions for Competitive Suppliers, which

are a part of the Retail Delivery Tariff, as may be amended from time to time.

**Contract Rate** means the value as set forth in Appendix B, as applicable to each Service Requirement, during a month in the Delivery Term.

**Conclusion Date** means the end of the HE 2400 EPT on the date set forth for the Service Requirement on Schedule 2 of Appendix A.

**Credit Rating** means (i) the lower of the ratings assigned to an entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by S&P and Moody's, (ii) in the event the entity does not have a rating for its senior unsecured long-term debt, the lower of the rating assigned to the entity as an issuer rating by S&P and Moody's, or the rating assigned to the entity as an issuer rating by any other rating agency agreed to by both Parties in each Party's sole and exclusive judgment.

**Credit Requirements** mean the satisfaction of any and all financial measures and/or Credit Rating status so as to avoid a Downgrade Event, as defined in Section 7.3(a).

**Customer Disconnection Date** means the date when a Default Service Customer is disconnected from service, as determined by the Buyer in accordance with the Retail Delivery Tariff.

**Customer Group** means the Small Customer Group, Medium Customer Group or Large Customer Group, as the case may be.

**Customer Initiation Date** means the date a retail customer of the Buyer begins taking service pursuant to the Schedule DS of the Buyer's Retail Delivery Tariff, as determined by the Buyer.

**Customer Termination Date** means the date when a Default Service Customer ceases to take service pursuant to Schedule DS under the Retail Delivery Tariff.

**Default Service** means the provision of Requirements by Seller at the Delivery Point to the Buyer to meet all needs of Default Service Customers.

**Default Service Customer(s)** means the retail customer(s) in each Customer Group taking service pursuant to Schedule DS of the Retail Delivery Tariff during the applicable Delivery Term.

**Delivered Energy** means the quantity of energy, expressed in MWh, provided by Seller under the terms of this Agreement. This quantity shall be the sum of energy reported to the ISO by the Buyer for each of the Load Assets identified in Section 6.4, with such quantity determined by the Buyer in accordance with Section 6.3 of this Agreement. Such quantity shall not include any allocation of PTF losses up to and including the Delivery Point (which the ISO may assess to Seller in relation to such energy), but shall include transmission and distribution losses on the Buyer's System from the Delivery Point to the meters of Default Service Customers.

**Delivery Point** means the location where Requirements are settled under ISO Rules. Currently, the energy obligation is settled at the WCMA Load Zone. The Buyer's System is physically metered at Flag Pond, the interconnection between the Buyer and New England Power Company.



**Delivery Term(s)** means the applicable period(s) beginning at the start of HE 0100 EPT in Schedule 1 through and including the end of the HE 2400 EPT in Schedule 2 of Appendix A.

**DTE** means the Massachusetts Department of Telecommunications and Energy.

**EPT** means Eastern Prevailing Time.

**Governing Documents** means, with respect to any particular entity, (a) if a corporation, the (i) articles of organization, articles of incorporation or certificate of incorporation and (ii) the bylaws; (b) if a general partnership, the partnership agreement and any statement of partnership; (c) if a limited partnership, the limited partnership agreement and the certificate of limited partnership; (d) if a limited liability company, the articles or certificate of organization or formation and operating agreement; (e) if another type of entity, any other charter or similar document adopted or filed in connection with the creation, formation or organization of such entity; (f) all equity holders' agreements, voting agreements, voting trust agreements, joint venture agreements, registration rights agreements or other agreements or documents relating to the organization, management or operation of any entity or relating to the rights, duties and obligations of the equity holders of any entity; and (g) any amendment or supplement to any of the foregoing.

**Interest Rate** means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under "Money Rates" on such day (or if not published on such day, on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

**Investment Grade** means (i) if any entity has a Credit Rating from both S&P and Moody's then, a Credit Rating from S&P equal to or better than "BBB-" and a Credit Rating from Moody's equal to or better than "Baa3"; or (ii) if an entity has a Credit Rating from only one of the S&P and Moody's, then a Credit Rating from S&P equal to or better than "BBB-" or a Credit Rating from Moody's equal to or better than "Baa3 or (iii) if the Parties have mutually agreed in writing on an additional or alternative rating agency, then a Credit Rating from S&P (if applicable) equal to or better than "BBB-" and/or a Credit Rating from Moody's (if applicable) equal to or better than "Baa3", and with respect to the additional or alternative rating agency, a credit rating equal to or better than that mutually agreed to by the Parties in each Party's sole and exclusive judgment.

**ISO** means the ISO New England Inc., its successors and/or assigns.

**ISO-NE Manuals** means the ISO Manual M-06 Financial Transmission Rights, the ISO Manual M-11 Market Operations, the ISO Manual M-20 Installed Capacity, the ISO Manual M-27 Tariff Accounting, the ISO Manual M-28 Market Rule 1 Accounting, the ISO Manual M-29 Billing, the ISO Manual M-35 Definitions and Abbreviations, the ISO Manual M-36 Forward Reserve, the ISO Manual M-LRP Load Response Program, as they may be amended, restated, or succeeded from time to time. In the event that ISO adopts additional manuals, then these shall also be included in this definition.

**ISO Rules** means all rules adopted by the ISO or NEPOOL, as such rules may be amended, added, superceded and restated from time to time, including but not limited to, the NEPOOL Agreement, ISO New England Inc. Transmission, Markets and Services Tariff FERC Electric

Tariff No. 3, the Transmission Operating Agreement, and the Participants Agreement, the ISO Manuals, and the ISO Operating Procedures.

**KWh** means Kilowatt-hour.

**Large Customer Group** shall mean Buyer's retail customers assigned to the rate class GD-3 under the Buyer's Retail Delivery Tariff.

**Material Adverse Effect** means, with respect to a Party, any change in or effect on such Party after the date of this Agreement that is materially adverse to the transactions contemplated hereby, excluding any change or effect resulting from (a) changes in the international, national, regional or local wholesale or retail markets for electric power; (b) changes in the international, national, regional or local markets for any fuel; (c) changes in the North American, national, regional or local electric transmission or distribution systems; and (d) any action or inaction by a governmental authority, but in any such case not affecting the Parties or the transactions contemplated hereby in any manner or degree significantly different from others in the industry as a whole.

**Medium Customer Group** shall mean Buyer's retail customers assigned to rate classes GD-2, GD-4, GD-5 and SD under its Retail Delivery Tariff.

**Moody's** means Moody's Investors Service, its successors and assigns.

**MWh** means Megawatt-hour.

**NE-GIS** means the NEPOOL Generation Information System, which includes a generation information database and certificate system, operated by NEPOOL, its designee or successor entity, that accounts for generation attributes of electricity consumed within New England.

**NE-GIS Certificates** means a document produced by the NE-GIS that identifies the relevant generation attributes of each MWh accounted for in the NE-GIS from a generation unit.

**NEPOOL** means the New England Power Pool, or its successor.

**NEPOOL Agreement** means the Second Restated New England Power Pool Agreement dated as effective on February 1, 2005, as amended or accepted by the Commission and as may be amended, superseded and/or restated from time to time.

**PTF** means facilities categorized as Pool Transmission Facilities under ISO Rules.

**Requirements** shall be defined in Section 4.2(c).

**Retail Delivery Tariff** means FG&E's Tariff for Electric Service.

**Service Requirement** means a load-following, wholesale power supply requirement, defined by a unique combination of Customer Group and Service Type.

**Shareholder Equity** means the Common Stock Equity as defined in the audited annual financial

statements prepared as of the date of determination in accordance with GAAP.

**Small Customer Group** shall mean Buyer's retail customers assigned to rate classes RD-1, RD-2, and GD-1 under its Retail Delivery Tariff.

**S&P** means Standard & Poor's Rating Group, its successors and assigns.

**WCMA Load Zone** means the West Central Massachusetts Load Zone as defined in the ISO Rules.

### **ARTICLE 3. TERM, SERVICE PROVISIONS AND REGISTRATION REQUIREMENTS**

#### **Section 3.1 Term**

This Agreement shall be effective immediately upon execution by the Parties and shall continue in effect until final payment is made hereunder. As of the expiration of this Agreement or, if earlier, its termination, the Parties shall no longer be bound by the terms and provisions hereof, except (a) to the extent necessary to enforce the rights and obligations of the Parties arising under this Agreement before such expiration or termination and (b) the obligations of the Parties hereunder with respect to audit rights, remedies for default, damages claims, indemnification and defense of claims shall survive the termination or expiration of this Agreement to the full extent necessary for their enforcement and the protection of the Party in whose favor they run, subject to any time limits specifically set forth in this Agreement.

#### **Section 3.2 Commencement of Supply**

(a) Beginning as of the Commencement Date applicable to the customer group(s) set forth on Appendix A, Seller shall provide Requirements to the Buyer. For purposes of certainty: Seller's obligations on the Commencement Date shall be to provide Requirements for all Default Service Customers taking service as of and including the Commencement Date.

(b) With respect to each person or entity that becomes a Default Service Customer subsequent to the Commencement Date, Seller shall provide Requirements to the Buyer to meet the needs of the Default Service Customer(s) as of and including the Customer Initiation Date for such customer initiating such service during the Delivery Term.

(c) During the Delivery Term that Seller provides Default Service to the Buyer's Large Customer Group, Buyer shall make best efforts to notify Seller promptly of all Customer Initiation Dates of retail customers in the Large Customer Group. Upon such notice, Buyer shall also provide historic annual (prior billed 12 months) peak kVa and total kWh consumption for such customers.

#### **Section 3.3 Termination and Conclusion of Supply**

(a) With respect to each Default Service Customer that terminates Default Service during the Delivery Term Seller shall not provide Requirements for such customer as of the Customer Termination Date.

(b) During the Delivery Term that Seller provides Default Service to the Buyer's Large Customer Group, Buyer shall make best efforts to notify Seller promptly of all Customer Termination Dates and Customer Disconnection Dates of retail customers in the Large Customer Group. Upon such notice, Buyer shall also provide historic annual (prior billed 12 months) peak kVa and total kWh consumption for such customers.

(c) Seller's obligation to provide Requirements shall cease at the Conclusion Date.

#### Section 3.4 Distribution Service Interruptions

Seller acknowledges that interruptions in distribution service occur and may reduce the load served hereunder. Seller further acknowledges and agrees that the Buyer may interrupt distribution service to customers consistent with the Distribution Service Terms and the Competitive Supplier Terms. In no event shall a Party have any liability or obligation to the other Party in respect of any such interruptions in distribution service.

#### Section 3.5 Release of Customer Information

The Buyer will not issue any customer information to Seller unless Seller has first obtained the necessary authorization in accordance with the provisions of the Competitive Supplier Terms.

#### Section 3.6 Change in Supply; No Prohibition on Programs

(a) Seller acknowledges and agrees that the number of customers and the Requirements to meet the needs of such customers will fluctuate throughout the Delivery Term and may equal zero. The Buyer shall not be liable to Seller for any losses Seller may incur, including but not limited to lost revenues, and losses that may result from any change in Requirements, number or location of customers taking service, the location of the Delivery Point(s), the composition or components of market products or Requirements, or the market for electricity, or change in the Retail Delivery Tariff. Seller further acknowledges and agrees that there is no limit on the number of Customer Initiation Dates, Customer Termination Dates and Customer Disconnection Dates.

(b) Seller acknowledges and agrees that the Buyer have the right but not the obligation to continue, initiate, support or participate in any programs, promotions, or initiatives designed to or with the effect of encouraging customers to leave Default Service for any reason ("Programs"). Nothing in this Agreement shall be construed to require notice to or approval of Seller in order for the Buyer to take any action in relation to Programs.

(c) Seller acknowledges and agrees that the Buyer and Affiliates of the Buyer will not provide Seller preferential access to or use of the Buyer's System and that Seller's sole and exclusive rights and remedies with regard to access to, use or availability of the Buyer's System, and the Buyer's or Affiliates of the Buyer's obligation to transmit electricity are those rights, remedies and obligations provided under the Retail Delivery Tariff, the ISO Rules, and the Buyer's Open Access Transmission Tariff.

#### Section 3.9 Disclosure Requirements

The Seller shall provide the Buyer information pertaining to power plant emissions, fuel types, labor information and any other information required by the Buyer to comply with Massachusetts Disclosure Label requirements. Using the NE-GIS, the Seller is obligated to transfer the NE-GIS Certificates, associated with the Service Requirements into the Buyer's NE-GIS Account. The Buyer would be obligated to confirm such transfers in the NE-GIS.

Nothing in this Section 3.9 shall be construed to require the Seller to provide new renewable NE-GIS certificates, which FG&E requires to comply with the Massachusetts Renewable Portfolio Standard.

#### Section 3.10 Regulatory Approvals

Notwithstanding Article 21(d), below, or anything else to the contrary herein, the Parties' obligations under this Agreement are subject to Buyer obtaining approval from the DTE of the inclusion in retail rates of the amounts payable by Buyer to Seller under this Agreement, without material modification to the obligations of either Party under this Agreement. Buyer shall use its best efforts to obtain prompt approval of such rates. If Buyer is unable to obtain DTE approval by [date], Buyer and Seller agree to review the status of such approval process and determine whether to continue to pursue the transaction contemplated in this Agreement. If the Parties cannot agree as to how to continue such transaction, this Agreement shall terminate without liability to either Party.

### **ARTICLE 4. SALE AND PURCHASE**

#### Section 4.1 Provision Delivery and Receipt

Seller shall provide and deliver to the Delivery Point and the Buyer shall receive at the Delivery Point the percent of the Requirements applicable to each Service Requirement as set forth on Appendix A during the Delivery Term.

#### Section 4.2 Responsibilities

(a) Buyer shall be responsible for arranging and paying for the transmission of the power across NEPOOL PTF and for any ancillary services, allocated to the Network Load, associated with the Service Requirements. Arranging and paying for transmission across NEPOOL PTF, required of the Buyer, includes, but is not limited to taking Regional Network Service under Schedule 9 of the ISO New England Inc. Transmission, Markets and Services Tariff ("ISO Tariff") and Network Integration Transmission Service under Schedule 21 - NEP under the ISO Tariff. Arranging and paying for ancillary services, required by the Buyer, includes, but is not limited to any transmission dispatch or power administration services, as may be allocated to Network Load in accordance with ISO Rules.

(b) Seller shall be responsible for all present and future obligations, requirements, and costs associated with the Requirements. Seller shall not be responsible for the provision of NE-GIS Certificates necessary for FG&E's compliance with the Massachusetts Renewable Portfolio Standards.

(c) Requirements mean the provision of energy as set forth in Section 4.2(e), capacity as set forth in Section 4.2(f), and ancillary services as set forth in Section 4.2(g), associated with the Service Requirements as set forth in Appendix A, at the Delivery Point.

(d) If ISO Rules are modified during the Term of this Agreement, which change the allocation of currently existing charges and obligations from the Load Asset, associated with the Service Requirements to the Network Load, associated with the Buyer's transmission responsibilities, then, if possible, the charges or obligations shall be transferred back to the Seller through the ISO and/or NEPOOL settlement process. If such transfer is not possible, then the Seller shall compensate the Buyer for any additional cost. If ISO Rules are modified during the Term of this Agreement, which change the allocation of currently existing charges and obligations from the Network Load, associated with the Buyer's transmission responsibilities to the Load Asset, associated with the Service Requirements, then, if possible, the charges or obligations shall be transferred back to the Buyer through the ISO and/or NEPOOL settlement process. If such transfer is not possible, then the Buyer shall compensate the Seller for such charges. If ISO Rules are changed after the date of this Agreement, which create new charges or obligations, associated with the Service Requirements, then the Seller shall be responsible for such new charges or obligations. Likewise, if ISO Rules are changed during the Term of this Agreement, which create new charges or obligations, associated with the Network Load, associated with the Buyer's transmission responsibilities, then the Buyer shall be responsible for such charges or obligations.

(e) Provision of energy includes, but is not limited to the following. Seller shall have the Real-Time Load Obligation, associated with the Service Requirements at the Delivery Point. Currently, the Energy Settlement Obligation, associated with the Service Requirements at the Delivery Point, is settled at the WCMA Load Zone. In the event that NEPOOL or the ISO implements nodal settlement of load obligations of the Day-Ahead Energy Market and Real-Time Energy Market, the Seller shall continue to be responsible for Day-Ahead and Real-Time Load Obligations at the appropriate settlement location(s), associated with the Service Requirements at the Delivery Point. Seller shall be responsible for submitting Demand Bids in the Day-Ahead Energy Market, associated with the Service Requirements.

(f) Provision of capacity includes, but is not limited to the following. Seller shall have the ICAP Settlement Obligation, associated with the Service Requirements at the Delivery Point. Currently, the ICAP Settlement Obligation, associated with the Service Requirements at the Delivery Point, can be satisfied with any ICAP resource, recognized by the ISO in the NEPOOL control-area or imported into the NEPOOL control-area. In the event that NEPOOL implements a locational capacity requirement, including that which was proposed in the Commission's docket number ER03-563, then the Seller will be responsible for providing ICAP at the location, required to meet the Locational ICAP Settlement Obligation, associated with the Service Requirements at the Delivery Point.

(g) Provision of ancillary services, required of the Seller, includes, but is not limited to Regulation, Operating Reserves, Reliability Must-Run Operating Reserves, Forward Reserves, and any transmission dispatch or power administration services, as may be allocated to the Owner of the Load Assets, associated with the Service Requirements in accordance with ISO Rules. If ISO Rules are changes such that locational ancillary services are required, then the Seller shall be responsible for meeting the locational ancillary services requirement, associated with the Service

Requirements at the Delivery Point.

## **ARTICLE 5. AMOUNT, BILLING and PAYMENT**

### **Section 5.1 Amount**

The amount payable by the Buyer to Seller for Delivered Energy in a month shall be the product of (a) the sum of the Delivered Energy for each Customer Group and Service Type, as identified in Appendix A in each month during the applicable Delivery Term; and (b) the Contract Rate for such Service Requirement as identified in Appendix B for such month during the applicable Delivery Term.

### **Section 5.2 Billing and Payment**

(a) On the tenth (10th) day of each month ("Invoice Date") during the term of this Agreement, Seller shall calculate the amount due and payable to Seller for Delivered Energy with respect to the preceding month (the "Calculation"). Seller shall provide the Calculation to the Buyer and such Calculation shall include sufficient detail for the Buyer to verify its formulation and computation. Calculations under this paragraph shall be subject to recalculation in accordance with Article 6 and shall be subject to adjustment (positive or negative) based upon such recalculation (a "Reconciliation Adjustment"). Seller shall promptly calculate the Reconciliation Adjustment upon receiving data described in Section 6.3 and shall include the adjustment, if any, in the next month's Invoice. A Reconciliation Adjustment based upon a change in the quantity for an earlier month shall be calculated using the applicable Contract Rate for the month in which the Delivered Energy was received.

(b) Seller shall submit to the Buyer an invoice with such Calculation as provided for in paragraph (a) of this Section (the "Invoice") and the respective amounts due under this Agreement on the Invoice Date. The Buyer shall pay Seller the amount of the Invoice (including the Reconciliation Adjustment, if any, as a debit or credit) less any amounts disputed in accordance with Section 5.3, on or before the tenth (10th) day after the Invoice Date, or the next following Business Day, (the "Due Date"). Except for amounts disputed in accordance with Section 5.3, if all or any part of the Invoice remains unpaid after the Due Date, interest shall accrue after but not including the Due Date and be payable to Seller on such unpaid amount at the Interest Rate in effect on the Due Date. The Due Date for a Reconciliation Adjustment shall be the Due Date of the Invoice in which it is included.

(c) Each Party shall notify the other Party upon becoming aware of an error in an Invoice, Calculation or Reconciliation Adjustment (whether the amount is paid or not) and Seller shall promptly issue a corrected Invoice. Overpayments shall be returned by the receiving Party upon request or deducted by the receiving Party from subsequent invoices, with interest accrued at the Interest Rate from the date of the receipt of the overpayment until the date paid or deducted.

### Section 5.3 Challenge to Invoices

Unless otherwise agreed: (i) either Party may challenge, in writing, the accuracy of Calculations, Invoices, Reconciliation Adjustments and data no later than twenty-four (24) months after the Due Date of the Invoice in which the disputed information is contained; (ii) if a Party does not challenge the accuracy within such twenty-four (24) month period, such Invoice shall be binding upon that Party and shall not be subject to challenge. With respect to amounts paid that are later disputed, upon notice of dispute, the Party receiving payment shall hold the amount in dispute in escrow for the benefit of the prevailing Party until the resolution of such dispute. If any amount in dispute is ultimately determined (under the terms herein) to be due to the other Party, it shall be paid or returned (as the case may be) to the other Party within three (3) Business Days of such determination along with interest accrued at the Interest Rate from the (i) date due and owing in accordance with the Invoice until the date paid or (ii) if the amount was paid and is to be returned, from the date paid, until the date returned.

### Section 5.4 Taxes, Fees and Levies

Seller shall be obligated to pay all present and future taxes, fees and levies ("Taxes") which may be assessed by any entity upon the Seller's performance under this Agreement including but not limited to the purchase and sale of Requirements. Seller shall pay all Taxes with respect to the Requirements up to and at the Delivery Point, and the Buyer will pay all Taxes with respect to the Requirements after the Delivery Point. All Requirements, including electricity and other related market products delivered hereunder by Seller to the Buyer shall be sales for resale with the Buyer reselling such electricity and products.

### Section 5.5 Netting and Setoff

Except for security provided pursuant to Section 7.3 (which shall not be considered for purposes of this Section 5.5) and unless otherwise specified in another agreement between the Parties, if the Parties are required to pay an amount in the same month each to the other under this Agreement or any other agreement between the Parties, or if any costs that are a Party's responsibility under this Agreement are incorrectly or inappropriately charged to the Party by the ISO, such amounts shall be netted, and the Party owing the greater aggregate amount shall pay to the other Party any difference between the amounts owed. Each Party reserves all rights, setoffs, counterclaims and other remedies and defenses (to the extent not expressly herein or therein waived or denied) that such Party has or to which such Party may be entitled arising from or out of this Agreement or the other agreement. Further, if the Buyer incurs any costs or charges that are the responsibility of Seller under this Agreement, such costs or charges may, at the Buyer election, be netted against any amount due to Seller under this Agreement. All outstanding obligations to make payment under this Agreement or any other agreement between the Parties may be netted against each other, set off or recouped there from, or otherwise adjusted.

## **ARTICLE 6. QUALITY; LOSSES and QUANTITIES REQUIRED; DETERMINATION AND REPORTING OF HOURLY LOADS**

### Section 6.1 Quality



All electricity shall be delivered to the Buyer in the form of three-phase sixty-hertz alternating current at the Delivery Point.

#### Section 6.2 Losses

Seller shall be responsible for any transmission losses up to and including the Delivery Point. Losses beyond the Delivery Point are included in Delivered Energy and are paid for by the Buyer at the applicable Contract Rate.

#### Section 6.3 Determination and Reporting of Hourly Loads

(a) The Buyer will estimate the Delivered Energy for Default Service provided by Seller pursuant to this Agreement based upon average load profiles developed for each of the Buyer's customer classes, actual metered data, as available, and the Buyer's actual total hourly load. The Buyer shall report to the ISO and Seller, the estimated Delivered Energy. The Buyer will normally report to the ISO and to Seller Seller's estimated Delivered Energy by 1:00 P.M. EPT of the second following Business Day. The Buyer shall have the right but not the obligation, in its sole and exclusive judgment, to modify the Estimation Process from time to time, provided that any such modification is designed with the objective of improving the accuracy of the Estimation Process.

Each month, the Buyer shall reconcile the Buyer's estimate of the Delivered Energy based upon the Buyer's meter reads (such meter reads as provided for in the Retail Delivery Tariff). The reconciliation, including all losses, shall be the adjusted Delivered Energy. The Buyer will normally notify the ISO of any resulting adjustment (debit or credit) to Seller's account for the Load Assets (set forth in Section 6.4) no later than the last day of the third month following the billing month.

#### Section 6.4 NEPOOL Settlement Power System Model Implementation

The Default Service provided by Seller pursuant to this Agreement will be initially represented within the NEPOOL Settlement Power System Model as described in Appendix A.

As soon as possible after the execution of this Agreement and before the Commencement Date, the Buyer shall assign to Seller, and Seller shall accept assignment of an Ownership Share for each Load Asset identified in Appendix A. Such assignment shall be effective beginning on the Commencement Date. Seller shall take any and all actions necessary to effectuate such assignment including executing documents required by ISO Rules. Once Seller's provision of Default Service terminates (at the end of a Delivery Term or otherwise), the Buyer and Seller will terminate Seller's Ownership Shares of the aforementioned Load Assets.

The Buyer shall have the right to change the Load Asset designations (identified above) from time to time, consistent with the definition and provision of Default Service. If and to the extent such designations change, the Buyer and Seller shall cooperate to timely put into effect the necessary documents that may be required to implement the new designations and terminate the prior designations.

## **ARTICLE 7.           DEFAULT AND TERMINATION**

### **Section 7.1    Events of Default**

(a)     Any one or more of the following events shall constitute an "Event of Default" hereunder with respect to the Buyer:

(i)     Failure of the Buyer

(A) in any material respect to comply with, observe or perform any covenant, warranty or obligation under this Agreement (but excluding events that are otherwise specifically covered in this Section as a separate Event of Default and except due to causes excused by Force Majeure or attributable to Seller's' wrongful act or failure to act in breach of this Agreement); and

(B) After receipt of written notice from Seller such failure continues for a period of five (5) Business Days, or, if such failure cannot be reasonably cured within such five (5) Business Day period, such further period as shall reasonably be required to effect such cure (but in no event longer than thirty (30) days), provided that the Buyer commences within such five (5) Business Day period to effect a cure and at all times thereafter proceed diligently to complete the cure as quickly as possible and provides to Seller written documentation of its efforts and plan to cure and estimated time for completion of the cure.

(ii)    Failure of the Buyer to (A) make when due any undisputed payment due to Seller hereunder; and (B) after receipt of written notice from Seller such failure continues for a period of three (3) Business Days.

(iii)   Failure of the Buyer to accept Default Service in accordance with Article 3 (unless excused by Force Majeure or attributable to the Seller's wrongful act or failure to act in breach of this Agreement, or otherwise in accordance with this Agreement).

(b)     Any one or more of the following events shall constitute an "Event of Default" hereunder with respect to Seller:

(i)     Failure of Seller

(A) in any material respect to comply with, observe, or perform any covenant, warranty or obligation under this Agreement (but excluding events that are otherwise specifically covered in this Section as a separate Event of Default and except due to causes excused by Force Majeure or attributable to the Buyer's wrongful act or wrongful failure to act in breach of this Agreement); and

(B) after receipt of written notice from the Buyer such failure continues for

a period of five (5) Business Days, or, if such failure cannot be reasonably cured within such five (5) Business Day period, such further period as shall reasonably be required to effect a cure (but in no event longer than thirty (30) days), provided that Seller commences within such five (5) Business Day period to effect such cure and at all times thereafter proceeds diligently to complete the cure as quickly as possible and provides to the Company written documentation of its efforts and plan to cure and estimated time for completion of the cure;

- (ii) Failure of Seller to provide Requirements in accordance with Articles 3 and 4
- (c) Any one or more of the following events with respect to either Party shall constitute an "Event of Default" hereunder with respect to such Party:
- (i) The entry by a court having jurisdiction in the premises of (A) a decree or order for relief in respect of such Party in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law, or (B) a decree or order adjudging such Party as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of such Party under any applicable federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of such Party or of any substantial part of its property, or ordering the winding up or liquidation of its affairs;
  - (ii) The commencement by such Party of a voluntary case or proceeding, or any filing by a third party of an involuntary case or proceeding against a Party that is not dismissed within forty-five (45) days of such filing, under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law, or of any other case or proceeding to be adjudicated as bankrupt or insolvent, or the consent by it to the entry of a decree or order for relief in respect of such Party in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable federal or state law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of a Party or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by such Party in furtherance of any such action;
  - (iii) Any representation or warranty made by a Party is or becomes false or misleading in any material respect.
  - (iv) Failure of such Party to deliver Performance Assurance when due in accordance with Section 7.3

## Section 7.2 Remedies Upon Default

The Parties shall have the following remedies available to them with respect to the occurrence of an Event of Default with respect to the other Party hereunder:

(a) Upon the occurrence of an Event of Default, the non-defaulting Party shall have the right to (i) continue performance under this Agreement and exercise such rights and remedies as it may have at law, in equity or under this Agreement and seek remedies as may be necessary or desirable to enforce performance and observation of any obligations and covenants under this Agreement, so long as such rights and remedies are not duplicative of any other rights and remedies hereof, and do not otherwise enable the non-defaulting Party to obtain performance or payments in excess of the performance and payments to which it is otherwise entitled pursuant to this Agreement, or (ii) at its option, give such defaulting Party a written notice (a "Termination Notice") terminating this Agreement. Upon a termination for a default or Event of Default under Section 7.1(a), (b) or (c)(iii), such termination shall be effective as of the date specified in the Termination Notice, which date shall be no earlier than the date such notice is effective and no later than thirty (30) days after the date of such notice is provided to the defaulting Party in accordance with Article 8.

Upon a termination for a default or Event of Default under Section 7.1(c)(i) or (ii), such termination shall be effective as of the Event of Default, upon notice being provided to the defaulting Party in accordance with Article 8. Any attempted cure by a defaulting Party after this Agreement has been terminated by the non-defaulting Party shall be void and of no effect. The Parties' obligations under this Agreement, in general and under this Section 7.2 in particular, are subject to the duty to mitigate damages as provided under common law.

(b) At any time after the occurrence of an Event of Default, or the delivery of a Termination Notice to the defaulting Party by the non-defaulting Party, the non-defaulting Party may exercise any rights it may have pursuant to the Article 7.3 (Security).

(c) In the event of termination for an Event of Default as provided in Section 7.1, in addition to any amounts owed for performance (or failure to perform) hereunder prior to such termination, the non-defaulting Party may recover, without duplication, its direct damages resulting from such Event of Default; such damages shall include the positive (if any) present value of this Agreement to the non-defaulting Party for the portion of the Delivery Term remaining at the time of such termination, to be determined by reference to market prices, transaction costs and load reasonably projected for the remaining portion of the Delivery Term ("Termination Damages"). The Termination Damages shall include all reasonably incurred transaction costs and expenses that otherwise would not have been incurred by the non-defaulting Party. In determining its Termination Damages, the non-defaulting Party shall offset its losses and costs by any gains or savings realized by the non-defaulting Party as a result of the termination.

Payment of Termination Damages, if any, shall be made by the defaulting Party to the non-defaulting Party within five (5) days after calculation of such Termination Damages and receipt of a notice including such calculation of the amounts owed hereunder and a written statement showing in reasonable detail the calculation and a summary of the method used to determine such amounts. Upon the reasonable request of the defaulting Party, the non-defaulting Party shall provide reasonable documentation to verify the costs underlying the Termination Damages. If the defaulting Party disputes the non-defaulting Party's calculation of the Termination Damages, in whole or in part, the defaulting Party shall, within five (5) days of receipt of the non-defaulting

Party's calculation of the Termination Damages, provide to the non-defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that, the defaulting Party shall first pay the Termination Damages, if any, to the non-defaulting Party in accordance with the preceding sentence, and the non-defaulting Party shall then deposit such disputed amount into an interest bearing escrow account for the benefit of the prevailing Party and the dispute shall be resolved in accordance with Section 15.2.

(d) Notwithstanding any other provision of this Agreement, the cure of any default or failure to comply with, observe or perform any covenant, warranty or obligation under this Agreement within the period provided therefor in this Article shall not release such defaulting Party from its obligations under Section 9.2 of this Agreement.

(e) Upon termination the Buyer shall, and upon the occurrence of an Event of Default by Seller, the Buyer shall have the right to, immediately notify the ISO that (i) the assignment from the Buyer to Seller of the 100% Ownership Share has been terminated, (ii) the Load Assets shall be removed from Seller's account and placed in the account of the Buyer and (iii) Seller consents to such action. In the event the Buyer so notifies the ISO, Seller shall immediately take any and all actions that may be required by the ISO to remove the Load Assets from Seller's account and place them in the account of the Buyer. If the Agreement has not been terminated, the Buyer, in its sole discretion with 5 Business Days prior notice to Seller, may elect to assign the 100% Ownership Share of the Load Assets to the account of Seller and Seller shall accept such assignment, consistent with the actions required by Section 6.4 of this Agreement.

### Section 7.3 Security

(a) If (i) with respect to Seller, the Credit Rating of Seller is downgraded by Moody's and S&P, such that its Credit Rating is below an Investment Grade; or (ii) with respect to Buyer, its Shareholder Equity is at any time less than [To be determined] (each a "Downgrade Event"), then within three (3) Business Days after a request of the other Party, the downgraded Party shall deliver the applicable amount of performance assurance required pursuant to this Article 7 ("Performance Assurance") to the other Party ("Compliant Party").

(b) If Performance Assurance is required to be posted by a Party pursuant to the immediately preceding paragraph, the following Sections 7.3(b)(i) through 7.3(b)(iv) shall apply:

(i) The Compliant Party shall calculate its exposure under this Agreement as soon as practicable after the Downgrade Event, and on a monthly basis thereafter ("Performance Assurance Calculation Date").

(ii) All Performance Assurance shall be delivered in the form of: (i) U.S. Dollars delivered by wire transfer of immediately available funds ("Funds"); or (ii) a Letter of Credit from a Qualified Institution (as defined herein). For purposes of determining the amount of Performance Assurance held at any time, a Letter of Credit shall be valued at zero unless it expires more than thirty (30) days after the date of valuation. For purposes of this Agreement, the Parties acknowledge that any Performance Assurance provided by Buyer shall be in the form of Funds as defined in this Section 7.3. For purposes hereof, "Letter(s) of Credit" means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a U.S. branch of a foreign bank (which is not an affiliate of either Party).

with such bank having a credit rating of at least A- from S&P and A3 from Moody's, having \$1,000,000,000 in assets (a "Qualified Institution"), and otherwise being in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

(iii) For purposes hereof, it shall be a Letter of Credit Default ("Letter of Credit Default") with respect to an outstanding Letter of Credit, upon the occurrence of any of the following events: (i) the bank issuing the Letter of Credit shall fail to maintain a credit rating of at least "A-" by S&P and "A3" by Moody's, (ii) the bank issuing the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of any applicable grace period; (iii) the bank issuing the Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of such Letter of Credit; (iv) such Letter of Credit shall fail or cease to be in full force and effect at any time during the term of any outstanding transaction; (v) any event analogous to an event specified in Section 7.1(b) of this Agreement shall occur with respect to the bank issuing the Letter of Credit; or (vi) the pledgor or the bank issuing the Letter of Credit shall fail to cause the renewal or replacement of the Letter of Credit to the secured party at least thirty (30) Business Days prior to the expiration of such Letter of Credit; provided, however, that no Letter of Credit Default shall occur in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to the pledgor in accordance with the terms of this Agreement. If a Letter of Credit Default occurs, then the Party which applied for such Letter of Credit shall have five (5) Business Days to cure the event(s) causing the Letter of Credit Default or to replace the Letter of Credit with a substitute Letter of Credit or Funds. Any failure to cure the event(s) causing the Letter of Credit Default or to provide a substitute Letter of Credit or Funds within five (5) Business Days of the event(s) leading to the Letter of Credit Default shall be an Event of Default under Section 7.1(c)(iv).

(iv) The Compliant Party will be entitled to hold posted Performance Assurance, provided that the following conditions applicable to it are satisfied: (1) the Compliant Party is not a defaulting Party; (2) the Compliant Party or Seller has and maintains an Investment Grade Credit Rating or at least the minimum Shareholder Equity required in Section 7.3(b), as applicable; and (3) the posted Performance Assurance is held only in the United States. For funds held as Performance Assurance by the Compliant Party, the Interest Rate will be the Federal Funds Rate as from time to time in effect. "Federal Funds Rate" means, for the relevant determination date, the rate opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical release designated as H.15 (519), or any successor publication, published by the Board of Governors of the Federal Reserve System. Such interest shall be calculated commencing on the date Performance Assurance in the form of cash is received by a Party but excluding the earlier of: (i) the date Performance Assurance in the form of cash is returned to a Party; or (ii) the date Performance Assurance in the form of cash is applied to a pledgor's obligations pursuant to Section 7.3 with the net amount of interest accrued monthly being payable on the third Business Day of the following month. A Party holding Performance Assurance may apply such Performance Assurance, without prior notice to the other party, to satisfy the obligations of the other Party in accordance with Section 7.2. Each Party hereby covenants and agrees that it shall be entitled herein to hold posted Performance Assurance as custodian on its own behalf as a secured party if it meets the criteria set forth above in this Section 7.3. However, if the Party holding Performance Assurance is not eligible to hold posted Performance Assurance pursuant to this Section 7.3, then such Party

shall be considered ineligible to hold posted Performance Assurance as a secured party and such posted Performance Assurance shall be maintained as follows: the ineligible secured party will cause all posted Performance Assurance received from the other Party to be segregated from the secured party's own property and identified clearly as Performance Assurance and to be held in an account in which no property of the secured party is held (a "Collateral Account") with a domestic office of a Qualified Institution, each of which accounts may include property of other parties which have delivered posted Performance Assurance to the secured party under other agreements, but will bear a title indicating that the secured party's interest in said account is as a holder of collateral. Such accounts will bear interest at the rate offered by the Qualified Institution. In addition, the secured party may direct the pledgor to transfer or deliver eligible Performance Assurance directly into the secured party's Collateral Account. The secured party shall cause statements concerning the posted Performance Assurance transferred or delivered by the pledgor to be sent to the pledgor on request, which may not be made more frequently than once in each calendar month.

(d) Prior to the Commencement Date and at any time upon the request by Buyer of Seller or by Seller of Buyer, the Party to whom the request is made shall establish that it meets the Credit Requirements by providing (x) a certificate of one of its authorized officers, accompanied by supporting certified financial statements and (y) documentation of its Credit Rating or its Shareholder Equity, as applicable. Buyer and Seller shall inform the other Party within one (1) Business Day of any failure to satisfy the Credit Requirements, provided that, in no event, shall the failure of a Party to provide the notice required pursuant to this sentence constitute a default or an Event of Default pursuant to Section 7.1.

#### Section 7.4 Forward Contract.

Each Party represents and warrants to the other that it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code, that this Agreement is a "forward contract" within the meaning of the United States Bankruptcy Code, and that the remedies identified in this Agreement, including but not limited to those specified in Section 7, shall be "contractual rights" as provided for in 11 U.S.C. § 556 as that provision may be amended from time to time.

### **ARTICLE 8. NOTICES, REPRESENTATIVES OF THE PARTIES**

#### Section 8.1 Notices

Any notice, demand, or request required or authorized by this Agreement to be given by one Party to another Party shall be in writing. It shall either be sent by facsimile (with receipt confirmed by telephone), courier, personally delivered (including overnight delivery service) or mailed, postage prepaid, to the representative of the other Party designated in accordance with this Article. Any such notice, demand, or request shall be deemed to be given (i) when sent by facsimile confirmed by telephone, (ii) when actually received if delivered by courier or personal delivery (including overnight delivery service) or (iii) seven (7) days after deposit in the United States mail, if sent by first class mail return receipt requested.

Notices and other communications by Seller to the Buyer shall be addressed to:

Mr. David K. Foote  
Sr. Vice President  
Fitchburg Gas and Electric Light Company  
6 Liberty Lane West  
Hampton, NH 03842  
(603) 773-6430 (phone)  
(603) 773-6630 (fax)

and

Notices concerning Article 7 shall also be sent to:

Mr. Mark H. Collin  
Treasurer  
Fitchburg Gas and Electric Light Company  
6 Liberty Lane West  
Hampton, NH 03842  
(603) 773-6612 (phone)  
(603) 773-6812 (fax)

Notices and other communications by the Buyer to Seller shall be addressed to:

[Name]  
[Company]  
[Address]  
[City, State & Zip]  
[Phone]  
[FAX]

Any Party may change its representative or address for notices by written notice to the other Party(ies); however such notice shall not be effective until it is received by the other Party(ies).

#### Section 8.2 Authority of Representative

The Parties' representatives shall have full authority to act for their respective Party in all matters relating to the performance of this Agreement. Notwithstanding the foregoing, a Party's representative shall not have the authority to amend, modify, or waive any provision of this Agreement unless they are duly authorized officers of their respective entities and such amendment, modification or waiver is made in accordance to Article 17.

### **ARTICLE 9. LIABILITY; INDEMNIFICATION; RELATIONSHIP OF PARTIES**

#### Section 9.1 Limitation on Consequential, Incidental and Indirect Damages

EXCEPT AS EXPRESSLY PROVIDED IN SECTIONS 9.2, TO THE FULLEST EXTENT PERMISSIBLE BY LAW, NEITHER THE BUYER NOR SELLER, NOR THEIR



RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, PARENT OR AFFILIATES, SUCCESSOR OR ASSIGNS, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, OR EMPLOYEES, SUCCESSORS, OR ASSIGNS, SHALL BE LIABLE TO THE OTHER PARTY OR ITS PARENT, SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, SUCCESSORS OR ASSIGNS, FOR CLAIMS, SUITS, ACTIONS OR CAUSES OF ACTION FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, MULTIPLE OR CONSEQUENTIAL DAMAGES (INCLUDING ATTORNEY'S FEES OR LITIGATION COSTS EXCEPT AS EXPRESSLY PROVIDED IN 15.2) CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, OR ANY ACTIONS UNDERTAKEN IN CONNECTION WITH OR RELATED TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY SUCH DAMAGES WHICH ARE BASED UPON CAUSES OF ACTION FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND MISREPRESENTATION), BREACH OF WARRANTY, STRICT LIABILITY, STATUTE, OPERATION OF LAW, OR ANY OTHER THEORY OF RECOVERY. THE PROVISIONS OF THIS SECTION SHALL APPLY REGARDLESS OF FAULT AND SHALL SURVIVE TERMINATION, CANCELLATION, SUSPENSION, COMPLETION OR EXPIRATION OF THIS AGREEMENT.

#### Section 9.2 Indemnification

(a) Seller agrees to defend, indemnify and save the Buyer, its officers, directors, employees, agents, successors assigns, and Affiliates and their officers, directors, employees and agents harmless from and against any and all third-party claims, suits, actions or causes of action and any resulting losses, damages, charges, costs or expenses, (including reasonable attorneys' fees and court costs), arising from or in connection with any (a) breach of a representation or warranty or failure to perform any covenant or agreement in this Agreement by Seller, (b) any violation of applicable law, regulation or order by Seller, (c) any act or omission by Seller with respect to this Agreement, first arising, occurring or existing during the term of this Agreement, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement, except to the extent caused by an act of gross negligence or willful misconduct by an officer, director, agent, employee, or Affiliate of the Buyer or its respective successors or assigns.

(b) The Buyer agrees to defend, indemnify and save Seller, its officers, directors, employees, agents, successor, assigns, and Affiliates and their officers, directors, employees and agents harmless from and against any and all third-party claims, suits, actions or causes of action and any resulting losses, damages, charges, costs or expenses, (including reasonable attorneys' fees and court costs), arising from or in connection with any (a) breach of representation or warranty or failure to perform any covenant or agreement in this Agreement by said Buyer, (b) any violation of applicable law, regulation or order by said Buyer, (c) any act or omission by the Buyer, with respect to this Agreement first arising, occurring or existing during the term of this Agreement, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement, except to the extent caused by an act of gross negligence or willful misconduct by an officer, director, agent, employee or Affiliate of Seller or its respective successors or assigns.

(c) If any Party intends to seek indemnification under this Section from the other Party with

respect to any action or claim, the Party seeking indemnification shall give the other Party notice of such claim or action within thirty (30) days of the later of the commencement of, or actual knowledge of, such claim or action; provided, however, that in the event such notice is delivered more than thirty (30) days after the Party seeking indemnification knows of such claim or action, the indemnifying Party shall be relieved of its indemnity hereunder only if and to the extent such indemnifying Party was actually prejudiced by the delay. The Party seeking indemnification shall have the right, at its sole cost and expense, to participate in the defense of any such claim or action. The Party seeking indemnification shall not compromise or settle any such claim or action without the prior consent of the other Party, which consent shall not be unreasonably withheld.

### Section 9.3 Independent Contractor Status

Nothing in this Agreement shall be construed as creating any relationship between the Buyer and Seller other than that of independent contractors for the sale and delivery of Requirements for Default Service.

## **ARTICLE 10. ASSIGNMENT**

### Section 10.1 General Prohibition Against Assignments

Except as provided in Section 10.2, neither Party shall assign, pledge or otherwise transfer this Agreement or any right or obligation under this Agreement without first obtaining the other Party's written consent, which consent shall not be unreasonably withheld.

### Section 10.2 Exceptions to Prohibition Against Assignments

(a) Seller may, without the Buyer's prior written consent, collaterally assign this Agreement in connection with financing arrangements provided that any such collateral assignment that provides for the Buyer to direct payments to the collateral agent (i) shall be in writing, (ii) shall not be altered or amended without prior written notice to the Buyer from both Seller and the collateral agent, and (iii) provided that any payment made by the Buyer to the collateral agent shall discharge the Buyer's obligation as fully and to the same extent as if it had been made to the Seller. Seller must provide the Buyer at least ten (10) days advance written notice of collateral assignment and provide copies of any such assignment and relevant agreements or writings.

(b) The Buyer may assign all or a portion of its rights and obligations under this Agreement to any Affiliate of the Buyer without consent of Seller. Either Party may, upon written notice, assign its rights and obligations hereunder, or transfer such rights and obligations by operation of law, to any entity with which or into which such Party shall merge or consolidate or to which such Party shall transfer all or substantially all of its assets, provided that such other entity agrees to be bound by the terms hereof and provided further, that such other entity's creditworthiness is comparable to or higher than that of such Party at the time this Agreement was executed and such Party is not relieved of any obligation or liability hereunder as a result of such assignment

## **ARTICLE 11. SUCCESSORS AND ASSIGNS**

This Agreement shall inure to the benefit of and shall be binding upon the Parties hereto and their respective successors and permitted assigns.

## **ARTICLE 12.        FORCE MAJEURE**

(a) Force Majeure shall include but not be limited to acts of God, earthquakes, fires, floods, storms, strikes, labor disputes, riots, insurrections, acts of war (whether declared or otherwise), acts of governmental, regulatory or judicial bodies, but if and only to the extent that such event or circumstance (i) directly affects the availability of the transmission or distribution facilities of NEPOOL, the Buyer or an Affiliate of the Buyer necessary to provide service to the Buyer's customers which are taking service pursuant to the Retail Delivery Tariff and (ii) it is not within the reasonable control of, or the result of the negligence of, the claiming Party, and which, by the exercise of due diligence, the claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (A) fluctuations in Default Service, (B) the cost to a Party to overcome or avoid, or cause to be avoided, the event or circumstance affecting such Party's performance or (C) events affecting the availability or cost of operating any generating facility.

(b) To the extent that either Party is prevented by Force Majeure from carrying out, in whole or in part, its obligations hereunder and (i) such Party gives notice and detail of the Force Majeure to the other Party as soon as practicable after the onset of the Force Majeure, including an estimate of its expected duration and the probable impact on the performance of its obligations hereunder; (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure, and (iii) the Party claiming Force Majeure uses commercially reasonable efforts to remedy or remove the inability to perform caused by Force Majeure, then the affected Party shall be excused from the performance of its obligations prevented by Force Majeure. However, neither Party shall be required to pay for any obligation the performance of which is excused by Force Majeure. This paragraph shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute are contrary to its interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the Party involved in the dispute.

(c) No obligations of either Party which arose before the Force Majeure occurrence causing the suspension of performance shall be excused as a result of the Force Majeure.

(d) Prior to the resumption of performance suspended as a result of a Force Majeure occurrence, the Party claiming the Force Majeure shall give the other Party written notice of such resumption.

## **ARTICLE 13.        WAIVERS**

No delay or omission in the exercise of any right under this Agreement shall impair any such right or shall be taken, construed or considered as a waiver or relinquishment thereof, but any such right may be exercised from time to time and as often as may be deemed expedient. The waiver

of any single breach or default of any term or condition of this Agreement shall not be deemed to constitute the waiver of any other prior or subsequent breach or default of the Agreement or any other term or condition.

#### **ARTICLE 14. LAWS AND REGULATIONS**

- (a) This Agreement and all rights, obligations, and performances of the Parties hereunder, are subject to all applicable federal and state laws, and to all duly promulgated orders and other duly authorized action of governmental authorities having jurisdiction hereof.
- (b) The rates, terms and conditions contained in this Agreement are not subject to change under Section 205 of the Federal Power Act as that section may be amended or superceded, absent the mutual written agreement of the Parties. Each Party irrevocably waives its rights, including its rights under §§ 205-206 of the Federal Power Act, unilaterally to seek or support a change in the rate(s), charges, classifications, terms or conditions of this Agreement or any other agreements entered into in connection with this Agreement. By this provision, each Party expressly waives its right to seek or support: (i) an order from FERC finding that the market-based rate(s), charges, classifications, terms or conditions agreed to by the Parties in the Agreement are unjust and unreasonable; or (ii) any refund with respect thereto. Each Party agrees not to make or support such a filing or request, and that these covenants and waivers shall be binding notwithstanding any regulatory or market changes that may occur hereafter.
- (c) Absent the agreement of all Parties to a proposed change, the standard of review for changes to this Agreement proposed by a non-party or the Commission acting sua sponte shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the "Mobile-Sierra" doctrine).

#### **ARTICLE 15. INTERPRETATION, DISPUTE RESOLUTION**

##### **Section 15.1 Governing Law**

The Agreement shall be governed by and construed and performed in accordance with and the laws of the Commonwealth of Massachusetts, without giving effect to its conflict of laws principles.

##### **Section 15.2 Dispute Resolution**

All disputes between the Buyer and Seller under this Agreement shall be referred, upon notice by one Party to the other Party, to a senior manager of Seller designated by Seller, and a senior manager of the Buyer designated by the Buyer, for resolution on an informal basis as promptly as practicable. In the event the designated senior managers are unable to resolve the dispute within ten (10) days of receipt of the notice, or such other period to which the Parties may jointly agree, such dispute shall be submitted to arbitration and resolved in accordance with the arbitration procedure set forth in this Section. The arbitration shall be conducted in Boston, Massachusetts before a single neutral arbitrator mutually agreed to and appointed by the Parties.

If the Parties fail to agree upon a single arbitrator within ten (10) days of the referral of the dispute to arbitration, Seller and the Buyer shall each choose one arbitrator, who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within ten (10) days select a third arbitrator to act as chairman of the arbitration panel. In either case, the arbitrator(s) shall be knowledgeable in electric utility matters, including wholesale power transactions and power market issues, and shall not have any current or past material business or financial relationships with either Party or a witness for either Party and shall not have a direct or indirect interest in any Party or the subject matter of the arbitration. The arbitrator(s) shall afford each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall generally conduct the arbitration in accordance with the then-current arbitration rules of the CPR Institute for Dispute Resolution (formerly known as the Center for Public Resources), unless otherwise mutually agreed by the Parties. There shall be no formal discovery conducted in connection with the arbitration unless otherwise mutually agreed by the Parties; provided, however, that the Parties shall exchange witness lists and copies of any exhibits that they intend to utilize in their direct presentations at any hearing before the arbitrator(s) at least ten (10) days prior to such hearing, along with any other information or documents specifically requested by the arbitrator(s) prior to the hearing. Any offer made and the details of any negotiations to resolve the dispute shall not be admissible in the arbitration or otherwise. Unless otherwise agreed, the arbitrator(s) shall render a decision within ninety (90) days of his, her or their appointment and shall notify the Parties in writing of such decision and the reasons therefore, and shall make an award apportioning the payment of the costs and expenses of arbitration among the Parties; provided, however, that each Party shall bear the costs and expenses of its own attorneys, expert witnesses and consultants unless the arbitrator(s), based upon a determination of good cause, awards attorneys fees and legal and other costs to the prevailing Party. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this Agreement and shall have no power to modify or change the Agreement in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction, subject expressly to Section 15.3. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act and/or the Administrative Dispute Resolution Act. Nothing in this paragraph shall impair the ability of a Party to exercise any right or remedy it has under this Agreement, including those in Article 7.

### Section 15.3 Venue; Waiver of Jury Trial

Each Party hereto irrevocably (i) submits to the exclusive jurisdiction of the federal and state courts located in the Commonwealth of Massachusetts; (ii) waives any objection which it may have to the laying of venue of any proceedings brought in any such court; and (iii) waives any claim that such proceedings have been brought in an inconvenient forum. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING RELATING TO THIS AGREEMENT.

## **ARTICLE 16. SEVERABILITY**

Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining

provisions and lawful obligations that arise under this Agreement. If any provision of this Agreement, or the application thereof to any Party or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision, and (b) the remainder of this Agreement and the application of such provision or circumstances shall not be affected by such invalidity or unenforceability.

#### **ARTICLE 17.           MODIFICATIONS**

No modification or amendment of this Agreement will be binding on any Party unless it is in writing and signed by both Parties.

#### **ARTICLE 18.           ENTIRE AGREEMENT**

This Agreement, including the Appendices, the tariffs and agreements referred to herein or therein, embody the entire agreement and understanding of the Parties in respect of the transactions contemplated by this Agreement. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to herein or therein. It is expressly acknowledged and agreed that there are no restrictions, promises, representations, warranties, covenants or undertakings contained in any material provided or otherwise made available by the Seller or the Buyer to each other. This Agreement supersedes all prior agreements and understandings between the Parties with respect to the transactions contemplated hereby.

#### **ARTICLE 19.           COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

#### **ARTICLE 20.           INTERPRETATION; CONSTRUCTION**

The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties and shall not in any way affect the meaning or interpretation of this Agreement. For purposes of this Agreement, the term "including" shall mean "including, without limitation". The Parties acknowledge that, each Party and its counsel have reviewed and or revised this Agreement and that any rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement, and it is the result of joint discussion and negotiation.

#### **ARTICLE 21.           REPRESENTATIONS; WARRANTIES AND COVENANTS**

Each Party represents to the other Party, upon execution and continuing throughout the term of this Agreement, as follows:

(a) It is duly organized in the form of business entity set forth in the first paragraph of this Agreement, validly existing and in good standing under the laws of its state of its organization and has all requisite power and authority to carry on its business as is now being conducted, including all regulatory authorizations as necessary for it to legally perform its obligations hereunder.

(b) It has full power and authority to execute and deliver this Agreement and to consummate and perform the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by it, and, assuming that this Agreement constitutes a valid and binding agreement of the other Party, constitutes its valid and binding agreement, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(c) Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, or the terms of any note, bond, mortgage, indenture, deed of trust, license, franchise, permit, concession, contract, lease or other instrument to which it is bound, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets.

(d) No declaration, filing with, notice to, or authorization, permit, consent or approval of any governmental authority is required for the execution and delivery of this Agreement by it or the performance by it of its obligations hereunder, other than such declarations, filings, registrations, notices, authorizations, permits, consents or approvals which, if not obtained or made, will not, in the aggregate, have a Material Adverse Effect.

(e) Neither the execution and delivery of this Agreement by it will nor the performance by it of its obligations under this Agreement will or does (i) conflict with or result in any breach of any provision of its Governing Documents, (ii) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which it or any of its subsidiaries is a party or by which it or any of its subsidiaries is bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or which, in the aggregate, would not have a Material Adverse Effect; or (iii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to it, which violation would have a Material Adverse Effect.

(f) There are no claims, actions, proceedings or investigations pending or, to its knowledge, threatened against or relating to it before any governmental authority acting in an adjudicative capacity relating to the transactions contemplated hereby that could have a Material Adverse Effect. It is not subject to any outstanding judgment, rule, order, writ, injunction or decree of any court or governmental authority which, individually or in the aggregate, would create a Material Adverse Effect.

(g) There are no bankruptcy, insolvency, reorganization, receivership or other similar proceedings pending or being contemplated by it, or of its knowledge threatened against it.

(h) It is a Participant of NEPOOL and is in compliance with all ISO Rules, including the

NEPOOL Financial Assurance Policy.

(i) It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party hereto, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement.

## **ARTICLE 22.**

## **CONSENTS AND APPROVALS**

The Parties shall cooperate so that each Party may take such actions as necessary and required for the other Party to effectuate and comply with this Agreement including to (i) promptly prepare and file all necessary documentation, (ii) effect all necessary applications, notices, petitions and filings and execute all agreements and documents, and (iii) use all commercially reasonable efforts to obtain all necessary consents, approvals and authorizations of all other entities, in the case of each of the foregoing clauses (i), (ii) and (iii), necessary or advisable to consummate the transactions contemplated by this Agreement. The Buyer shall have the right to review and approve in advance all characterizations of the information relating to the transactions contemplated by this Agreement which appear in any filing, press release or public announcement made in connection with the transactions contemplated hereby.

## **ARTICLE 23.**

## **CONFIDENTIALITY**

Neither Seller nor the Buyer shall provide copies of [BIDDERS: Insert sections] or disclose the contents thereof (the “Confidential Terms”) to any third party without the prior written consent of the other Party; provided, however, that either Party may provide a copy of the Confidential Terms, in whole or in part to (1) any regulatory agency requesting and/or requiring such Confidential Terms, provided that any such disclosure must include a request for confidential treatment of the Confidential Terms, and (2) an Affiliate if related to the Party’s performance of its obligations hereunder, provided that such Affiliate agrees to treat the Confidential Terms as confidential in accordance with this clause.

[Remainder of Page Intentionally Left Blank]



IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement on their behalf as of the date first above written.

FITCHBURG GAS AND ELECTRIC LIGHT COMPANY

BY:

Its

[COMPANY]

BY:

Its\_\_\_\_\_

APPENDIX A  
Service Requirements Matrix  
By Service Requirement, Load Asset Name and ID, Load Responsibility, and  
Applicable Period

Service Requirement	Load Asset ID	Load Responsibility	Schedule 1	Schedule 2
FGE DEFAULT SERVICE LARGE LOAD	1095	100%	September 1, 2005	November 30, 2005

APPENDIX B  
Monthly Contract Rate by Service Requirement  
Dollars per MWh

Service Requirement	Asset ID	September 2005	October 2005	November 2005
FGE DEFAULT SERVICE LARGE LOAD	1095			

**Appendix C: Current Default Service Tariff, Effective 06-01-2005**

See file named “App\_C\_DS\_Tariff\_2005-06.pdf”

FITCHBURG GAS AND ELECTRIC LIGHT COMPANY  
DEFAULT SERVICE  
**SCHEDULE DS**

1. General

This Tariff may be revised, amended, supplemented or supplanted in whole or in part from time to time according to the procedures provided in MDTE regulations and Massachusetts law. In case of conflict between this Tariff and any orders or regulations of the MDTE, said orders or regulations shall govern.

2. Definitions

- A. "Company" shall mean Fitchburg Gas and Electric Light Company.
- B. "Competitive Supplier" shall mean any entity licensed by the MDTE to sell electricity to retail Customers in Massachusetts, with the following exceptions: (1) a Distribution Company providing Default Service to its distribution Customers, and (2) a municipal light department that is acting as a Distribution Company.
- C. "Customer" shall mean any person, partnership, corporation, or any other entity, whether public or private, who obtains Distribution Service at a Customer Delivery Point and who is a Customer of record of the Company.
- D. "Customer Delivery Point" shall mean the Company's meter or a point designated by the Company located on the Customer's premises.
- E. "Default Service" shall mean the service provided by the Distribution Company to a Customer who is not receiving Generation Service from a Competitive Supplier in accordance with the provisions set forth in this tariff.
- F. "Distribution Company" shall mean an electric company organized under the laws of Massachusetts that provides Distribution Service in Massachusetts.
- G. "Distribution Service" shall mean the delivery of electricity to Customers by the Distribution Company.
- H. "Generation Service" shall mean the sale of electricity, including ancillary services such as the provision of reserves, to a Customer by a Competitive Supplier.
- I. "MDTE" shall mean the Massachusetts Department of Telecommunications and Energy.

3. Availability

Default Service shall be available to any Customer who is not receiving Generation Service from a Competitive Supplier.

FITCHBURG GAS AND ELECTRIC LIGHT COMPANY  
DEFAULT SERVICE  
**SCHEDULE DS (continued)**

4. Rates

Fixed Pricing Option:

This pricing option is available to all customers.

Effective January 1, 2001, all residential customers on Schedules RD -1 and RD-2 and small general service customers on Schedule GD -1 receiving Default Service will automatically be placed on this fixed rate, unless the Customer elects the Variable Monthly Pricing Option.

The fixed rate will remain the same for three or six months at a time and will be based on the average monthly wholesale price over the three or six-month period that the Company pays to its Default Service provider. The rate is fixed for a period of three months for customers on Schedule GD-3. The rate is fixed for six months for customers on Schedules RD -1, RD-2, GD-1, GD-2, GD-4, GD-5 and SD.

Customers assigned to this Fixed Pricing Option may choose the Variable Monthly Pricing Option. Customers electing the Variable Monthly Pricing Option will not have the opportunity to switch back to the Fixed Pricing Option for as long as the Customer continues to receive uninterrupted Default Service.

Monthly bills will be recalculated for Customers who are on the Fixed Pricing Option for Default Service and decide to switch to a competitive supplier before the three or six-month period is over. The electric bill for the period of the fixed three or six month rate will be recalculated using the monthly variable rate for that period. This ensures that all consumers pay the actual cost of electricity they have used. This adjustment may be a credit or a debit, and will be reflected on the first bill after the switch is effective.

Residential customers on Schedules RD-1 and RD-2 and small general service customers on Schedule GD-1 who switch to a competitive supplier and later return to Default Service will be initially placed on the Fixed Pricing Option unless the Customer elects the Variable Monthly Pricing Option.

The rates for Fixed Pricing Option Default Service<sup>1</sup> shall be as follows:

For Schedules RD-1, RD-2:	\$0.07543 per kWh
For Schedule GD-1:	\$0.07557 per kWh
For Schedules GD-2, GD-4, GD-5, SD:	\$0.07676 per kWh
For Schedule GD-3:	\$0.07970 per kWh

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<sup>1</sup> Includes Default Service Costs Adder of \$0.00104 per kWh approved in D.T.E. 03-88 A-F.

FITCHBURG GAS AND ELECTRIC LIGHT COMPANY  
DEFAULT SERVICE  
**SCHEDULE DS (continued)**

Variable Monthly Pricing Option:

This option is available to all customers.

Effective January 1, 2001, general service customers on Schedules GD -2, GD-3, GD-4, and GD-5 and outdoor lighting customers on Schedule SD receiving Default Service will automatically be placed on this variable monthly rate option, unless the Customer elects the Fixed Pricing Option.

The variable rate will change from month to month reflecting the monthly wholesale price that the Company pays to its Default Service provider.

Customers assigned to the Variable Monthly Pricing Option may choose the Fixed Pricing Option. Customers electing the Fixed Pricing Option will not have the opportunity to switch back to the Variable Monthly Pricing Option for as long as the Customer continues to receive uninterrupted Default Service.

General service customers on Schedules GD -2, GD-3, GD-4, and GD-5 and outdoor lighting customers on Schedule SD who decide to switch to a competitive supplier and later return to Default Service will be initially placed on the Variable Monthly Pricing Option, unless the Customer elects the Fixed Pricing Option.

The rates for Variable Monthly Pricing Option Default Service<sup>2</sup> shall be as follows (per kWh):

<u>Class</u>	<u>June 2005</u>	<u>July 2005</u>	<u>August 2005</u>	<u>September 2005</u>	<u>October 2005</u>	<u>November 2005</u>
Residential: Schedules RD-1 and RD-2	\$ 0.07508	\$ 0.07957	\$ 0.08068	\$ 0.07211	\$ 0.06971	\$ 0.07352
Small General Service: Schedule GD-1	\$ 0.07522	\$ 0.07972	\$ 0.08083	\$ 0.07224	\$ 0.06984	\$ 0.07365
Regular General Service and Outdoor Lighting: Schedules GD-2, GD-4, GD-5 and SD	\$ 0.07551	\$ 0.08292	\$ 0.08368	\$ 0.07291	\$ 0.07099	\$ 0.07294
Large General Service: Schedule GD-3	\$ 0.07617	\$ 0.08151	\$ 0.08141	N/A	N/A	N/A

These rate(s) for Default Service are established through a competitive bidding process, but in no case shall exceed the average monthly market price for electricity, as determined by the MDTE.

<sup>2</sup> Includes Default Service Costs Adder of \$0.00104/kWh approved in D.T.E. 03-88 A-F.

FITCHBURG GAS AND ELECTRIC LIGHT COMPANY

DEFAULT SERVICE

**SCHEDULE DS (continued)**

Customers will be notified of changes in Default Service rates in advance of their effective dates in accordance with guidelines set forth by the MDTE, as may be amended from time to time. Such notifications will be made in a variety of manners including a toll free number, the Company's website, bill inserts, and bill messages. Notification of rates will be made via the Company's website at [www.unitil.com](http://www.unitil.com) and a toll free number 30 days in advance of the effective date. Default Customers will receive 60 day notification of upcoming rate changes via a bill message and 30 day notification of the new rates via a bill message. All customers will receive a bill insert explaining Default Service in the billing cycle prior to the rate change.

5. Billing

Each Customer receiving Default Service shall receive one bill from the Company, reflecting unbundled charges for their electric service.

6. Initiation of Default Service

Default service may be initiated in any of the following manners:

- A. A Customer who is receiving Generation Service from a Competitive Supplier notifies the Company that he wishes to terminate such service and receive Default Service. In this instance, Default Service shall be initiated within two (2) business days of such notification for residential Customers. For other Customers, Default Service shall be initiated concurrent with the Customer's next scheduled meter read date, provided that the Customer has provided such notification to the Company two (2) or more business days before the next scheduled meter read date, in accordance with the Company's Terms and Conditions for Competitive Suppliers. If the Customer provided such notification fewer than two (2) days before the Customer's next scheduled meter read date, Default Service shall be initiated concurrent with the Customer's subsequent scheduled meter read date;
- B. A Competitive Supplier notifies the Company that it shall terminate Generation Service to a Customer. In this instance, Default Service shall be initiated for the Customer concurrent with the Customer's next scheduled meter read date, provided that the notice of termination of Generation Service is received by the Company two (2) or more business days before the next scheduled meter read date, in accordance with the Company's Terms and Conditions for Competitive Suppliers. If the notice of termination is received fewer than two (2) days before the Customer's next scheduled meter read date, Default Service shall be initiated concurrent with the Customer's subsequent scheduled meter read date;
- C. A Competitive Supplier ceases to provide Generation Service to a Customer, without notification to the Company. In this instance, Default Service to the Customer shall be initiated immediately upon the cessation of Generation Service .



FITCHBURG GAS AND ELECTRIC LIGHT COMPANY  
DEFAULT SERVICE  
**SCHEDULE DS (continued)**

7. Termination of Default Service

Default Service may be terminated by a Customer concurrent with the Customer's next scheduled meter read date provided that notice of initiation of Generation Service by a Competitive Supplier is received by the Company two (2) or more business days before the next scheduled meter read date, in accordance with the Company's Terms and Conditions for Competitive Suppliers.

If the notice of initiation of Generation Service by the Competitive Supplier is received by the Company fewer than two days before the Customer's next scheduled meter read date, Default Service shall be terminated concurrent with the Customer's subsequent scheduled meter read date.

There shall be no fee for terminating Default Service.

8. Reconciliation of Default Service Costs

At the end of each calendar year, the Company shall reconcile recoveries with the cost of Default Service pursuant to the Company's Default Service Adjustment - Schedule DSA, MDTE No. 101. Beginning June 1, 2005 these costs include the following:

A. Supplier Costs: The costs billed to FG&E by its Default Service providers plus the cost of Renewable Energy Certificates purchased for Default Service in compliance with 225 CMR 14.00 – Renewable Energy Portfolio Standard. Renewable Energy Certificates are the title or claim for the generation attributes associated with a Renewable Generator that is compliant with the definition of a New Renewable Generation Source as found in 225 CMR 14.00 – Renewable Energy Portfolio Standard.

Recoveries and costs associated with the Default Service Costs Adder shall be excluded from this reconciliation since the Default Service Costs Adder is separately reconciled as discussed below.

9. Default Service Costs Adder

Effective June 1, 2005, the Default Service rates will include the Default Service Costs Adder. The Company shall perform an annual reconciliation of recoveries with the costs of the Default Service Costs Adder and credit or charge any imbalances, with interest, in the computation of the Default Service Costs Adder for the following twelve month period. Interest shall be calculated using the prime rate after tax (i.e. prime rate \* (1 – tax rate)). The tax rate shall be the combined federal and state income tax rate. The prime rate is to be fixed on a quarterly basis and established as reported in The WALL STREET JOURNAL on the first business day of the month preceding the calendar quarter; if more than one rate is

FITCHBURG GAS AND ELECTRIC LIGHT COMPANY  
DEFAULT SERVICE  
**SCHEDULE DS (continued)**

reported, the average of the reported rates shall be used. The Company may file to change the factor at any time should significant over - or under-recoveries occur or be expected to occur.

The Default Service Costs Adder shall include the following costs associated with Default Service:

A. Cost of Working Capital, calculated as follows,

Cost of Working Capital = Working Capital Requirement \* Tax Adjusted Cost of Capital,

where:

Working Capital Requirement = Supplier Costs \* Number of Days Lag/365

Number of Days Lag is the number of days lag to calculate the purchased power working capital requirement as defined in the Company's most recent Lead Lag Study approved by the Department,

Tax Adjusted Cost of Capital = Cost of Debt + (Cost of Equity/(1-Effective Tax Rate))

where:

The Cost of Debt is the debt component of the rate of return as approved by the Department in the Company's most recent base rate case,

The Cost of Equity is the equity component of the rate of return as approved by the Department in the Company's most recent base rate case, and

The Effective Tax Rate is the combined effective state and federal income tax rate;

B. Bad Debt Costs, calculated as follows,

Bad Debt Costs = Bad Debt Expense \* Allocation Factor

where:

Bad Debt Expense are test year bad debt expense as approved by the Department in the Company's most recent base rate case,

The Allocation Factor as approved by the Department in the Company's reconciliation filing. Such allocation factor shall be based on a percentage of actual account write-offs recorded and tracked for the DS billing components to total write-offs.

FITCHBURG GAS AND ELECTRIC LIGHT COMPANY

DEFAULT SERVICE

**SCHEDULE DS (continued)**



- C. Administrative cost of compliance with Massachusetts Renewable Energy Portfolio Standard, 225 CMR 14. Annually, these costs shall be \$421.32.
- D. Cost of the design and implementation of competitive bidding process, including evaluation of supplier bids and contract negotiations, and ongoing administration and execution of contracts with suppliers, including accounting activities necessary to track payments made to suppliers. Annually, these costs shall be \$17,278.32.
- E. Cost of compliance with MDTE's regulatory requirements including required communication with Default Service customers pursuant to 220 CMR 11.06. Annually, these costs shall be \$51,933.32.

Annually, the costs in C., D. and E. above sum to \$69,632.96 and shall be fixed until the next general distribution rate case in which the Company proposes or the MDTE directs the removal of Default Service-related costs, or unless otherwise proposed to be adjusted by the Company, subject to approval by the MDTE. However, at such time that the migration of the Company's customers from Default Service to competitive supply increases to a significant level as compared to the level at the time these costs were developed, the costs detailed above may be adjusted to reflect the decline in Default Service customers.

***Tab B. Comparison of Bids - CONFIDENTIAL***

**CONFIDENTIAL**

***Tab C. Renewable Energy Certificate Broker Sheets***

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### Compliance RECs Market Prices on 07/18/05:



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Colored rows highlight watched markets. [\[ click here to](#)




### Texas REC prices on 07/18/05

term	bid price (change)		offer price (change)		last price (change)		date	
2003	\$12.00	n/c	\$12.75	n/c	\$13.00	n/c	3/22/05	
2004	\$12.00	n/c	\$12.75	n/c	\$12.30	n/c	5/26/05	
2005	\$12.00	n/c	\$13.00	n/c				

### Massachusetts New REC prices on 07/18/05

term	bid price (change)		offer price (change)		last price (change)		date	
Cal'05	\$48.00	n/c	\$53.00	n/c	\$51.50	n/c	6/22/05	
Cal'06	\$35.00	n/c	\$45.00	n/c	\$39.50	n/c	11/01/04	


### Connecticut Class I REC prices on 07/18/05

term	bid price (change)		offer price (change)		last price (change)		date	
2005	\$28.00	n/c	\$33.00	n/c	\$34.50	n/c	7/12/05	
2006	\$25.00	n/c	\$35.00	n/c	\$36.50	n/c	5/21/04	
2007			\$35.00	n/c				




### Connecticut Class II REC prices on 07/18/05

term	bid price (change)		offer price (change)		last price (change)		date	
2005	\$0.40	n/c	\$0.65	n/c	\$0.50	n/c	5/26/05	
2006	\$0.50	n/c	\$0.85	n/c	\$0.72	n/c	11/02/04	




### Maine REC prices on 07/18/05

term	bid price (change)		offer price (change)		last price (change)		date	
2005	\$0.20	n/c	\$0.50	n/c	\$0.70	n/c	8/31/04	




### New Jersey Class I REC prices on 07/18/05


planning years	bid price (change)		offer price (change)		last price (change)		date	
2004-2005	\$6.00	n/c	\$7.00	n/c	\$7.50	n/c	6/30/05	
2005-2006	\$7.00	n/c	\$7.75	n/c	\$7.50	n/c	6/30/05	
2006-2007	\$7.00	n/c	\$8.50	n/c	\$7.50	n/c	3/24/05	

#### New Jersey Class II REC prices on 07/18/05

planning years	bid price (change)		offer price (change)		last price (change)		date	
2004-2005	\$1.00	n/c	\$3.00	n/c	\$3.50	n/c	06/30/05	
2005-2006	\$3.00	n/c	\$4.00	n/c	\$3.50	n/c	06/30/05	
2006-2007	\$4.15	n/c	\$4.25	n/c	\$4.00	n/c	05/06/05	

#### New Jersey Solar REC prices on 07/18/05


planning years	bid price (change)		offer price (change)		last price (change)		date	
2004-2005	\$200.00	n/c	\$275.00	n/c	\$260.00	n/c	6/24/05	
2005-2006	\$200.00	n/c	\$225.00	n/c	\$220.00	n/c	4/25/05	
2006-2007	\$200.00	n/c	\$225.00	n/c	\$170.00	n/c	4/14/05	


 Acrobat (PDF) version all markets


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 **Product Snapshot** Click on this icon to receive a full view of recent market activity for this market. Data points include bid-offer-last and settle information for the last trading day, plus the most recent spot and option trades for this market.

 **Settle Price Chart Quick Link** This indicates there price chart available for this market. Click on the icon directly to the settle price chart.

 **Trade Quick Link** Indicates the marked product traded on the current day. Click on the icon to go directly to trade (spot or option) data for this market.

 **Highlighted rows** Mark products that are being watched. Adding and removing watched products is easy; just click on the icon to quickly update the watcher.

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Voted Best SO<sub>2</sub>, NO<sub>x</sub>, REC, EU GHG Broker in Environmental Finance

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NATSOURCE

# RE Trends Weekly

Week of June 17, 2005

## US Compliance Markets (\$/MWh)

### NEPOOL - Massachusetts RECs

Vintage	Bid	Ask	Last
2005	48.00	53.19	46.00
2006	41.00	48.00	39.50
2007	-	44.00	34.00
2008	-	34.00	-

### NEPOOL - Connecticut Class I

Vintage	Bid	Ask	Last
2005	32.00	35.00	35.00
2006	25.00	33.00	-
2005-07	20.00	32.00	28.58

### NEPOOL - Connecticut Class II

Vintage	Bid	Ask	Last
2005	-	1.50	-

### PJM - New Jersey Class I\*

R.Y.	Bid	Ask	Last
2005	5.00	7.00	6.00
2006	7.25	8.00	7.50
2007	7.00	8.50	-
2008	7.00	8.50	-

### PJM - New Jersey Class II\*

R.Y.	Bid	Ask	Last
2005	-	2.00	1.50
2006	2.00	4.25	4.25
2007	2.00	5.00	-

### PJM - New Jersey Solar RECs\*

R.Y.	Bid	Ask	Last
2005	220.00	260.00	250.00
2006-2008	150.00	225.00	200.00

\*Market pricing based on June-May "reporting year".

## Natsource Renewable Energy Desk

T: (212) 232-5305 For further information, please call us:  
F: (212) 232-5353 **Matt Williamson or George Tung** would  
www.natsource.com be happy to assist you.

### ERCOT - Texas RECs

Vintage	Bid	Ask	Last
2003	12.00	13.00	13.50
2004	12.00	14.00	12.50
2005	12.00	14.00	-

### Power Estimates

Day-Ahead [ICE Daily Index]

NEPOOL Mass Hub Peak	\$ 74.50
PJM -West Hub Real-Time Peak	\$ 63.49
ERCOT - North Peak	\$ 101.33
NYISO	\$ 64.50

\*\*Price is based on OTC standard 5 X 16 peak power contract.

## Voluntary REC Spot Markets

Region	Wind (New)		Biomass (New)		Biomass/Geothermal (Old)		Hydro	
	Bid	Ask	Bid	Ask	Bid	Ask	Bid	Ask
NYISO	5.00	20.00	5.00	20.00	-	-	-	2.75
Midwest	1.50	3.00	2.00	3.00	-	3.00	-	-
WECC-US	1.50	2.00	4.00	5.00	0.50	1.00	0.25	0.75
SERC	-	-	-	-	0.50	3.00	-	-
NEPOOL	50.00	61.00	-	-	-	-	0.50	2.00

All REC prices are based on unit-contingent delivery unless otherwise noted. All prices are for indication purposes only. Please contact the Natsource Renewable Energy Desk for current market pricing.

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